

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,)
4 Plaintiff,) 04CR00706 (FB)
5)
6 V.) United States Courthouse
7) Brooklyn, New York
8 DAMION HARDY AND ARRON)
GRANTON,) MONDAY, APRIL 20, 2015
Defendants.) 10:00 a.m.
9 _____)

10 TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
11 BEFORE THE HONORABLE FREDERIC BLOCK
12 UNITED STATES SENIOR DISTRICT JUDGE

13 APPEARANCES:

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12 Proceedings recorded by mechanical stenography, transcript
13 produced by Computer-Assisted Transcript.

1 THE CLERK: Criminal cause on trial, United States
2 America versus Damion Hardy and Aaron Granton, with all
3 parties and counsel present.

4 THE COURT: Good morning, everybody. I was about to
5 say I hope you enjoyed the time off, but I suspect you did
6 not.

7 And Mr. Beecher where are you?

8 MR. BEECHER: We're here.

9 THE COURT: Did the folks you were looking for
10 arrive, by any chance?

11 MR. BEECHER: I spent too much of the last 72 hours
12 back and forth with e-mails. They shall not be coming.

13 THE COURT: So you're satisfied?

14 MR. BEECHER: Yes.

15 THE COURT: Very good.

16 Mr. Ruhnke, you're standing to stretch or to speak
17 with the judge?

18 MR. RUHNKE: To speak with the judge, if I may.

19 THE COURT: Very briefly, because these jurors are
20 so good I'm going to give them an award for being the best
21 jurors I've ever had.

22 I assume they're bringing lunch in.

23 THE CLERK: Yes.

24 MR. RUHNKE: Your Honor, I just wanted to say one
25 thing, and I was hoping to speak to your law clerk so he's not

1 doing unnecessary work. Last night we filed a motion in part
2 to strike the evidence recovered from Mary Hardy's apartment.
3 I realized after the fact that I consented to those documents
4 coming into evidence, and I stand by my consent, and so I'm
5 withdrawing that --

6 THE COURT: Thank you very much. But, you know,
7 we'll have ample time. It's a rainy day today. We're going
8 to hopefully go a long way towards completing the government's
9 case. We've got the draft charge and things we're going to
10 talk about, but at least we're pretty much on schedule.

11 MR. RUHNKE: We're advises the government will rest
12 its case tomorrow, at some point, and it might even spill over
13 into Wednesday.

14 THE COURT: Well, let's see how much we can
15 accomplish today, and at the end of the day we can talk a
16 little bit about some of the nuances on the charge. It's just
17 devastating for the jurors to have to be subjected to this.

18 MR. RUHNKE: Agreed, your Honor.

19 THE COURT: And I'm going to make a real Herculean
20 effort to cut it down and eliminate things, which we'll talk
21 about, so that these poor folks don't have to be subject to
22 abject torture, but we'll talk about that later.

23 Are we ready to bring the jurors in and our next
24 witness?

25 MR. AMATRUDA: Yes.

1 THE COURT: And who is the next witness going to be?

2 MR. AMATRUDA: Yes, your Honor. We're going to call
3 Dale Simon first.

4 THE COURT: All right. Your last cooperator is
5 going to be coming some time at the end of the morning or
6 beginning of the afternoon?

7 MR. AMATRUDA: Yes, probably the afternoon some
8 time, Judge. We have quite a number of quick witnesses to get
9 through, but we're making every effort --

10 THE COURT: You've done a good job in organizing
11 your work here, so I'm not going to question you more about
12 it.

13 MR. AMATRUDA: Thanks, your Honor.

14 THE COURT: We'll see where we are at the end of the
15 day.

16 I'd like the record to reflect once more that I've
17 never had a case in twenty years, especially one of sixteen
18 jurors, where they've been on time every single day for about
19 three weeks. It's remarkable and speaks well for these folks,
20 and I'm going to congratulate them.

21 (In the presence of the jury.)

22 THE COURT: Good morning, everybody. We have our
23 next witness. And let's hear who this person is.

24 MS. DAYANANDA: Dale Simon.

25 THE COURT: Is there a number that corresponds to

1 his name?

2 MS. DAYANANDA: He's on the supplement.

3 THE COURT: We don't have enough on your regular
4 list, so we have to supplement, right? This is Witness Number
5 174?

6 MS. DAYANANDA: I think it's Witness 30.

7 THE COURT: Witness 30.

8 MS. DAYANANDA: I mean, no, not on the list, but in
9 the grand scheme of things.

10 THE CLERK: Good morning, Mr. Simon. Ask you to
11 please stand and raise your right hand.

12 THE COURT: Just one second.

13 THE CLERK: Do you affirm to tell the truth?

14 THE WITNESS: Yes, I do.

15 THE CLERK: You do?

16 THE WITNESS: I do.

17 THE COURT: All right. Thank you. Please have a
18 seat. Please state and spell your name.

19 THE WITNESS: Dale Simon, D-a-l-e; last name,
20 S-i-m-o-n.

21 DALE SIMON,

22 called as a witness by the government, having been first duly
23 sworn, was examined and testified as follows:

24 THE COURT: Your witness.

25 MS. DAYANANDA: Thank you, your Honor.

Simon - Direct - Dayananda

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1 DIRECT EXAMINATION

2 BY MS. DAYANANDA:

3 Q Good morning, Mr. Simon. Could you tell the jury how old
4 you are?

5 A I am 38 years old.

6 Q Are you working?

7 A Yes, I am.

8 Q What type of work do you do, generally?

9 A I'm in the music and music film industry.

10 Q Mr. Simon, can you draw your attention to -- I think the
11 mike --

12 THE CLERK: I'm working on it.

13 THE COURT: Since you're in the music industry, you
14 know about microphones, right?

15 THE WITNESS: Yes.

16 THE COURT: Play around with it until your voice is
17 perfect.

18 THE CLERK: I'm working on it.

19 Q Directing your attention to August 9th of 2000, did you
20 go out that evening in Manhattan?

21 A Yes.

22 Q Where did you go?

23 A I went to a club called NV, a nightclub on Spring Street
24 and Varick.

25 Q And do you remember what time you got to the club that

Simon - Direct - Dayananda

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1 evening?

2 A About 12:30 at night, 12:30 a.m.

3 Q And did you end up leaving, I guess it would be, the
4 morning of the 10th in August of 2000?

5 A Yes.

6 Q What time did you leave the club?

7 A About 3:30.

8 Q Did you see anyone you recognize when you left?

9 A One friend -- one friend of mine called Peanut.

10 Q Do you know his real name?

11 A At that time, no, we didn't. We just, you know,
12 basically saw each other at the clubs and knew each other from
13 the music and a couple of videos. We didn't really have a
14 name-to-name basis. We just knew him by his nickname.

15 Q I'm going to show you what's already been entered into
16 evidence as Government Exhibit Number 808. Do you recognize
17 either of those people?

18 A Just one person, the guy to the right, which is Peanut.

19 Q And you said you knew him from the music industry; is
20 that right?

21 A Yes.

22 Q And from videos?

23 A Yeah.

24 Q Why is that?

25 A I think at the time he was dating Lil' Kim, and she

Simon - Direct - Dayananda

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1 was -- basically had him in two or three videos at that time,
2 and he was basically moving around as her boyfriend, so we
3 kind of assumed that he was in the music industry, due to the
4 fact that he was so frequent with her.

5 Q Did you talk to Peanut that evening?

6 A Yes, I did.

7 Q And where did that take place?

8 A That happened, actually, outside of the club, right
9 before he was shot.

10 Q Now, when you spoke to him, was he -- was he outside?
11 Can you just describe where that conversation took place?

12 A I happened to leave the club. I was waiting for two of
13 my friends that were still inside of the club, and I parked on
14 Spring Street, waiting for him to come out. At that time, I
15 noticed that Peanut, at that time, was driving the same car
16 that I had. He had a Range Rover, a green Range Rover. So he
17 pulled up in front of me, and, you know, he nodded me like
18 "I'm here." I said I hadn't seen him in a long time, so he
19 kind of, like, pulled up in front of me, in this little space
20 that was in front of another car, kind of like a -- it wasn't
21 a real space, it was more of like a slot where you could just,
22 like, put your nose in but not really park.

23 So he pulled up in front of me, and I got out of my
24 car to have a conversation. He was still sitting in the car,
25 and I was talking to him through the driver's side window on

Simon - Direct - Dayananda

2118

1 the sidewalk.

2 Q What happened then?

3 A Then three shots -- I heard three shots, and I kind of
4 ducked to the left side of the wall where the club was and
5 hopped in my truck, and that's when he pulled off. And
6 halfway down the block I noticed that his car had flipped
7 over.

8 Q Mr. Simon, I'm going to show you what's been entered
9 already into evidence as 801I. Do you recognize this photo?

10 A Yes.

11 Q Can you tell us what this is a photo of?

12 A This is actually the block of the club. The club is on
13 the left-hand side, and I believe that's actually Spring
14 Street that I'm looking down.

15 Q Okay. And if you touch the screen --

16 A Okay.

17 Q -- you can actually show us, if you think -- if you could
18 show us about where your car was parked, where you saw Peanut
19 on the morning of August 10th, 2000?

20 A Okay. My car is parked on the left -- right here
21 (indicating). That's where my car is. And then his car was
22 parked -- pulled up in front of that car, so in that space
23 right there (indicating.)

24 Q Is there a reason why your car was parked there, at that
25 time?

Simon - Direct - Dayananda

2119

1 A Yes, because there's a door to the club that the VIPs
2 leave through, that door that's in front of those cars.

3 Q You can mark the door.

4 A So the door is right here (indicating.) That's the VIP
5 door.

6 Q Is there a separate entrance to the club as well?

7 A Yes, there's another entrance on this far side, more to
8 the left.

9 Q And would that be Hudson?

10 A Yes, that would be Hudson. There's a door on Hudson
11 also.

12 Q From what we're seeing, you said this is Spring Street;
13 is that right?

14 A Yes, that is.

15 Q When you said you were talking to Peanut, you said you
16 were in the driver's side window?

17 A Yes.

18 Q Was anyone else inside the car?

19 A No, he was by himself.

20 Q Were you facing him through the front or to the side?

21 A I was --

22 Q You can demonstrate.

23 A Well, I was actually in the window with my side facing
24 down Spring, so my back is to Hudson.

25 Q Okay. So to be clear, your back is to that corner that

Simon - Direct - Dayananda

2120

1 we see here?

2 A Yes.

3 Q Now, when you heard the, you said, three gunshots, where
4 were they coming from?

5 A From the back of me.

6 Q That would be Hudson?

7 A Yes.

8 Q And at the time you heard the gunshots, what did you do?

9 A I actually moved over into that corner that's right here.
10 There's like a little crevice. There's crevices in those
11 corners that you can actually stand, so I kind of moved over
12 to that left until I could get to my car.

13 Q What did you see Peanut do?

14 A By that time, he had already pulled off from the -- he
15 screeched off from the sidewalk.

16 Q When you said screeched off, what do you mean?

17 A Like, he pulled off very fast, very, very, very, fast.

18 Q And once you saw him pull off, then did you go to your
19 car?

20 A Yes, I did.

21 Q And what did you see then? What did you do then?

22 A Everybody was kind of in a -- you know, in a scurry for
23 the shots, so I was kind of -- at the time, my friends were
24 still waiting -- were in the club, but they came out at that
25 time, like when they heard the shots. We all hopped in the

Simon - Direct - Dayananda

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1 car, and then we tried to get off the block, but by that time,
2 you know, the accident had already happened, so we couldn't go
3 too much further. And I also stopped to make sure he was
4 okay, at that time.

5 Q He, meaning who?

6 A Peanut.

7 Q Okay. And did you see the car flip, at that point?

8 A Yes, I did.

9 Q Now, using that photo, generally, can you tell us where
10 that happened?

11 A Yes, I'm still in my car here, and he flips here.

12 Q And do you remember what street corner that was?

13 A I want to believe -- that's actually better I can, corner
14 of Varick.

15 Q And what happened once you got to that location?

16 A He was hanging out the window, and there were people
17 trying to rob him, at that time.

18 Q Did you -- rob him of what?

19 A He had his jewelry, his watches, you know. He had a lot
20 of expensive things on that night, so as he's halfway out the
21 window, people are trying to take his watch and jewelry off.

22 Q Now, at that time -- what time would you estimate this
23 incident occurred? I know it's been a long time, but at the
24 end of the club night?

25 A I want to say around 4:00 --

Simon - Direct - Dayananda

2122

1 Q A.m.?

2 A A.m., in the morning.

3 Q The corner of Spring Street and Hudson, was it crowded at
4 that time?

5 A Yes.

6 Q From the clubgoers?

7 A Yes, from the clubgoers.

8 Q And at that corner, where you saw the car had ultimately
9 crashed, was it crowded there as well?

10 A Yes, it had -- it wasn't crowded at first, but by the
11 time I got in my car and drove to the scene, it was extremely
12 crowded.

13 Q Let me show you Government Exhibit 801A. Do you
14 recognize that photo?

15 A Yes.

16 Q And what's that a photo of?

17 A That's a photo of -- actually the corner of 6th Avenue
18 and Spring, but it's from -- it's from the actual -- it's
19 from -- it's actually the picture but closer, now that it's
20 closer now.

21 Q And is that where the crash happened that you saw?

22 A Yeah, close to -- maybe a little higher. Maybe a little
23 closer. Maybe in the middle of the block. Not so much right
24 there. Maybe closer, in the middle of Spring, because this is
25 the actual corner of -- closer to 6th.

Simon - Direct - Dayananda

2123

1 Q And just getting back to when the actual shots were
2 fired, Mr. Simon, were you able -- you said you were still in
3 the window talking to Peanut; is that correct?

4 A Yes.

5 Q And did you see at that time whether he was shot?

6 A No.

7 Q When did you realize he was shot?

8 A After he flipped his car over, I realized he was shot.

9 Q Can you explain why?

10 A It was just -- the gunshots were so fast that, you know,
11 there's really no time to think, and from the gunshots to the
12 time that he pulled over, could have been less than a minute.
13 Like, it was instant. From the time he got -- from the time
14 you heard the shots, to the time that he pulled off from the
15 corner, it seemed like no time elapsed. It was at the same
16 time. Just heard the shots. Automatically ducked and got to
17 my car. And as I'm more focused on getting to my car, he's
18 pulling off.

19 Q When you were standing in the driver's side window, were
20 there other people around the car, at that time?

21 A No, but because of the type of cars that we were driving,
22 of course, there would be people looking at us. We had two
23 Range Rovers, at that time, that were brand-new.

24 Q Meaning your --

25 A And his Range Rover. There were two Range Rovers.

Simon - Direct - Dayananda

2124

1 MR. BEECHER: I didn't hear that. There were two
2 Range Rovers? Can you read the answer to that?

3 THE COURT: Wait. This is unorthodox. What is it
4 that you're questioning now? You have an objection?

5 MR. BEECHER: No, I just didn't hear what he said.

6 THE COURT: He didn't hear what you said.

7 A I said that our cars were very, very popular, because
8 they were two brand-new Range Rovers. I had the same color
9 that he had that year; that's what made us stop and talk to
10 each other outside the club.

11 Q Just to clarify again, when -- you were talking to Peanut
12 facing east, I guess, on Spring; is that correct?

13 A Uh-huh.

14 Q Where did you believe the shots were fired from?

15 A They had to be fired from here, from the corner. They
16 had to be fired from the corner.

17 Q Why do you say that?

18 A Because I'm still alive. Because where he got shot and
19 where I'm speaking to him, there's nobody in front of us. He
20 was shot from the back while I'm talking to him, because
21 nobody approached us. The shots came from the back of me; I
22 know that for a fact.

23 Q And no one was near the car immediately at the Range
24 Rover you were talking to; is that right?

25 A No.

Simon - Direct - Dayananda

2125

1 MS. DAYANANDA: Thank you so much.

2 THE COURT: What club is this again?

3 THE WITNESS: Club NV.

4 THE COURT: NV?

5 THE WITNESS: Yes, NV.

6 THE COURT: Where is that located?

7 THE WITNESS: That's in Manhattan, Spring and
8 Varick.

9 THE COURT: On the corner of Spring and Varick?

10 THE WITNESS: Varick Street, yes.

11 THE COURT: Your witness.

12 MR. RUHNKE: Thank you.

13 CROSS-EXAMINATION

14 BY MR. RUHNKE:

15 Q Mr. Simon, good morning.

16 A Good morning.

17 Q NV is the letters "NV," correct?

18 A Yes.

19 Q Not the word "envy"?

20 A No.

21 Q Just a couple of questions. You described "Peanut,"
22 Mr. Davis, parking his Range Rover like nose in, but not quite
23 into a parking space?

24 A Yes.

25 Q Was there a car in front of his?

Simon - Cross - Ruhnke

2126

1 A Not really.

2 Q Could he have pulled his whole Range Rover into the
3 space?

4 A Yes.

5 Q Okay. So he just sort of nosed in. After he was shot,
6 did you see him back up? Go forward? What did you see
7 regarding the car?

8 A The car just went forward; he went down the block.

9 Q And you said a few minutes ago that you were driving a
10 Range Rover; he was driving a Range Rover. Big, fancy cars,
11 right?

12 A Yes.

13 Q Attracted a lot of attention to people, just because of
14 the nature of the car?

15 A Yes.

16 Q Yours was green, wasn't it?

17 A Yes, it was.

18 Q Okay. And his was black?

19 A I would like to say it was green, too. I don't remember,
20 actually, the color.

21 Q In any event, you were driving a green Range Rover, at
22 that time?

23 A Yes.

24 MR. RUHNKE: I have nothing further. Thank you.

25 THE COURT: Any further questions?

Simon - Cross - Beecher

2127

1 MR. HERMAN: Yes, your Honor. Briefly.

2 CROSS-EXAMINATION

3 BY MR. BEECHER:

4 Q Good morning, Mr. Simon.

5 A Good morning.

6 Q My name is Robert Beecher, and I represent Mr. Granton.

7 I just have a couple of questions for you. You told us a

8 little bit earlier that you saw Peanut with Lil' Kim?

9 A Yes.

10 Q And that because you saw him with Lil' Kim you assumed
11 that he was in the music industry?

12 A Yes.

13 Q Because Lil' Kim is in the music industry?

14 A Yes.

15 Q Could you have been mistaken about that? Could you have
16 been?

17 A No.

18 MS. DAYANANDA: Objection, your Honor.

19 THE COURT: Overruled.

20 Q Might you have been mistaken about having seen him with
21 Lil' Kim?

22 A No.

23 Q Now, you left the club, NV, about 3:30 in the morning?

24 A Yes.

25 Q And you left with two other friends, didn't you?

Simon - Cross - Beecher

2128

1 A Yes.

2 Q Would that have been Mr. Ashby?

3 A Yes.

4 Q And would that have been Gerald?

5 A Yes.

6 Q What is Gerald's last name, if you know?

7 A Christie.

8 Q What is it?

9 A Christie.

10 Q How do you spell that?

11 A C-h-r-i-s-t-i-e.

12 Q So you, and Jamel, and Gerald left the club together?

13 A Yes.

14 Q And you were talking to Mr. Davis, correct?

15 A Yes.

16 Q And where was Davis -- I mean, excuse me. Where was
17 Mr. Ashby, and where was Gerald?

18 A They were actually at the corner store.

19 Q At the corner --

20 A -- store. There's a corner store that's on Varick Street
21 that's 24 hours. That's where they were.

22 Q When the three of you left together, they had gone to the
23 corner store, and you had been speaking to Mr. Davis about
24 your car?

25 A Right.

Simon - Cross - Beecher

2129

1 Q Now, when you got over to where the Range Rover was
2 flipped over, you mentioned that there were some people,
3 basically, robbing Mr. Davis as he hung out of the window?

4 A Yes.

5 Q That's what you saw?

6 A Yes.

7 Q Did you tell the police about that?

8 A Yes.

9 Q Does the name Puerto Rican Mike mean anything to you,
10 anything at all?

11 A No.

12 Q And you saw them taking his watch off, and he was wearing
13 other jewelry?

14 A Yes.

15 Q Did you see them run up to him, or were they just there
16 when you got there?

17 A They were actually leaving when I got there.

18 Q They were leaving?

19 A They were, like, scattering when I got there.

20 MR. HERMAN: I don't have any further questions.

21 THE COURT: Anything further from the government?

22 MS. DAYANANDA: Yes, two things, your Honor.

23 REDIRECT EXAMINATION

24 BY MS. DAYANANDA:

25 Q Mr. Simon, you were asked about what you thought Peanut's

Simon - Redirect - Dayananda

2130

1 relationship was with Lil' Kim. Where had you seen them
2 together?

3 A I had seen them in Brooklyn together, and, plus, I had
4 seen them in videos. He's a primary, I want to say, aspect
5 of -- in her first video coming out with Biggie Smalls, so --

6 Q What video was that?

7 A I want to say "Get Money."

8 Q And when you say a primary person, he's featured in that
9 music video?

10 A He's featured in the music video.

11 Q Back in August 2000, did you speak to the police that
12 day?

13 A Yes, I did.

14 MS. DAYANANDA: Thank you.

15 THE COURT: All right. Next witness.

16 MS. PAUL: Next witness will be Edward St. John.

17 THE CLERK: Good morning.

18 THE WITNESS: Good morning.

19 THE CLERK: Ask you to remain standing, and if you
20 could raise your right hand. Do affirm to tell the truth?

21 THE WITNESS: I do.

22 THE CLERK: Thank you. Please have a seat. Please
23 state and spell your name.

24 THE WITNESS: Edward St. John.

25

St. John - Direct - Paul

2131

1 EDWARD ST. JOHN,
2 called as a witness by the government, having been first duly
3 sworn, was examined and testified as follows:

4 THE COURT: Your witness.

5 MS. PAUL: Thank you.

6 DIRECT EXAMINATION

7 BY MS. PAUL:

8 Q Good morning.

9 A Good morning.

10 Q Are you employed?

11 A Yes, I am.

12 Q Where?

13 A North Carolina, for a contract security company.

14 Q Where did you work before that?

15 A New York City Police Department.

16 Q How long were you a police officer with the NYPD?

17 A Ten years a police officer, ten years a detective, for a
18 total of 20.

19 Q All right. And what grade detective were you when you
20 retired?

21 A Third grade.

22 Q When did you retire?

23 A June of 2008.

24 Q In September of 1999, what precinct were you working in?

25 A 79 Precinct in Brooklyn.

St. John - Direct - Paul

2132

1 Q The 79th Precinct?

2 A Yes, ma'am.

3 Q I'm going to direct your attention to September 8th of
4 '95. Were you working that day?

5 A Yes, I was.

6 Q Were you working alone or with somebody else?

7 A I was working with my partner, Police Officer Dillon.

8 Q What was your job that day?

9 A We were assigned to patrol in a marked up police car.

10 Q At about -- what tour were you working?

11 A It was a midnight shift. It was 23:15 hours by 07:50 in
12 the morning.

13 Q Okay. So that's 11 --

14 A 11:15 p.m. to 7:50 a.m.

15 Q Military time?

16 A Sorry.

17 Q So at about 1 o'clock, 1:50 in the morning, what
18 happened?

19 A We received a call for a person shot at 534 Marcy Avenue.

20 Q What happened after you got that call?

21 A My partner and I responded to the sixth floor hallway at
22 that location.

23 Q And that location, is that within the Marcy Housing
24 Projects?

25 A Yes, it is.

St. John - Direct - Paul

2133

1 Q So when you got to the sixth floor stairwell, what did
2 you see?

3 A I observed a male black, probably about 17, 18 years old,
4 and had a numerous gunshot wounds.

5 Q Did you later learn his name?

6 A Yes, I did.

7 Q What was his name?

8 A Damion Hardy -- I'm sorry. Marcel Kennedy. I'm sorry.

9 Q Did you speak to him?

10 A Yes, I did.

11 Q How long was your conversation with him?

12 A I might have been up there for maybe a minute.

13 Q And did he say anything to you during that minute that
14 caused you to do something else?

15 MR. RUHNKE: Your Honor, I'm going to object to
16 that.

17 THE COURT: Sustained. Rephrase the question.

18 Q What did he say to you?

19 MR. RUHNKE: Objection.

20 THE COURT: What was the question again?

21 MS. PAUL: I'm asking if he said anything --

22 THE COURT: If who? Who said?

23 MS. PAUL: Marcel Kennedy said anything to the
24 detective that caused him to do something else, your Honor.

25 THE COURT: What's the nature of your objection?

St. John - Direct - Paul

2134

1 MR. RUHNKE: The nature of the objection is that
2 this is obvious -- hearsay.

3 THE COURT: Well, all right. So my apologies. I'm
4 preparing for another trial, so I wasn't paying as much
5 attention as I should have. So this is another situation
6 where at the very least the question is being asked of the
7 witness not necessarily for the truth, but to see whether as a
8 result of getting that information he then took some action.
9 So, once again, it's another example of that type of
10 situation. He can testify as to what was said to him.

11 And if, in fact, you needed that information to do
12 something else, right?

13 THE WITNESS: Yes.

14 THE COURT: We're allowing it for that purpose. My
15 apologies for not paying attention.

16 Go ahead.

17 Q What was that that he told you that caused you to do
18 something else?

19 A He told me -- he said "World" did it.

20 Q And at the time you were working at the 79th Precinct,
21 were you familiar with a person by the name of "World"?

22 A Yes.

23 Q Did you know his real name?

24 A Yes, I did.

25 Q What was his real name?

St. John - Direct - Paul

2135

1 A Damion Hardy.

2 Q And as a result of what Mr. Kennedy said to you, what did
3 you do next?

4 A We knew that Damion resided -- or we assumed he resided
5 in Lafayette Gardens, so we proceeded towards that location.

6 Q While you were proceeding to that location, did you get
7 additional information that caused you to look for anything in
8 particular?

9 A We had a description of a vehicle that might have been
10 used in connection with a grey station wagon.

11 Q What happened next?

12 A We were driving towards Lafayette Gardens. I don't
13 remember what street we were on. I think it was Myrtle
14 Avenue. We observed the grey station wagon pull away from the
15 side of the curb, occupied by two male blacks.

16 Q What happened next?

17 A We followed the vehicle for several blocks, and we
18 finally stopped it on, I believe Nostrand Avenue, just off on
19 of the Willoughby Avenue.

20 Q When you stopped the car, what kind of car was it?

21 A It was grey, I believe, Chevy station wagon.

22 Q You said there were two people in the car. Did you later
23 learn who they are?

24 A Yes.

25 Q Who were they?

St. John - Direct - Paul

2136

1 A The driver was Damion Hardy; the passenger was James
2 Sessoms.

3 Q All right. So after you stopped the car, what happened
4 next?

5 A I'm sorry.

6 Q After you stopped the car, what happened next?

7 A We removed both people from the car.

8 Q Okay. I'm going to show you Government Exhibit 302.

9 MS. PAUL: Which is not yet in evidence, your Honor.
10 It's 302, and it may not be on your list, your Honor.

11 THE COURT: Trying to find it. Go ahead. What's
12 your question?

13 Q I'm going to show it to you. Do you recognize it? You
14 can't see it very well. I can walk it up to you.

15 A I can see it. It's the vehicle voucher for the '91 Chevy
16 Caprice station wagon that I vouchered for the scene.

17 MS. PAUL: I'm going to offer it, at this time.

18 THE COURT: Any objection?

19 MR. RUHNKE: No objection.

20 THE COURT: The voucher is in evidence.

21 (Government's Exhibit 302 was received in
22 evidence.)

23 MS. PAUL: Thank you.

24 Q I'm sorry. You said it was a '91 Chevy Caprice. And did
25 you indicate a license plate number? I don't know if you can

St. John - Direct - Paul

2137

1 read that on your copy. It's a grainy copy of the voucher.

2 A It looks like K2M2599. I can't really see it on this
3 copy.

4 Q All right. So after you stopped Mr. Hardy and Mr.
5 Sessoms, what happened next?

6 A I asked them their names, and the driver told me he was
7 Damion Hardy; the passenger told me James Sessoms. At the
8 time, we transported both of them to Elmhurst Hospital.

9 Q What happened there?

10 A We did a show-up with the victim?

11 Q What's a show-up, for the jury?

12 A He was shot numerous times. We weren't sure if he was
13 going to live or not, so we brought both people to --
14 basically to the hospital, and asked them -- Mr. Kennedy if he
15 can ID them.

16 Q What was Mr. Kennedy's -- apart from being in the
17 hospital and shot up, do you know where he was in the hospital
18 when that happened?

19 A I believe the emergency room; he was on the stretcher.

20 Q All right. Were you the arresting officer on this case?

21 A Yes.

22 Q What does that mean?

23 A I placed both subjects into custody.

24 Q Apart from that, do you also fill out paperwork as the
25 arresting officer?

St. John - Direct - Paul

2138

1 A Yes, I did.

2 Q Did you do so related to your stop of Mr. Hardy and Mr.
3 Sessoms?

4 A Yes.

5 Q And the shooting of Marcel Kennedy, was part of that --
6 as part of that, did you collect information about the arrest?

7 A Yes, I did.

8 Q Were you giving a voucher for ballistics recovered at the
9 scene of the shooting?

10 A Yes, ma'am.

11 Q And do you remember the voucher number as you sit here?

12 A No, I do not.

13 MS. PAUL: If I can just for the witness --

14 THE COURT: Is this in evidence, by the way?

15 MS. PAUL: It's not. I'm showing 3500ES4, which is
16 just for -- not to be offered. Just to refresh his memory.

17 THE COURT: This is not going to be put in evidence.
18 It's just to refresh your memory. Take your time to see
19 whether it jogs your recollection now.

20 THE WITNESS: It's good like that. Yes, that was
21 vouchered by, I believe, a housing officer, in regards to the
22 shooting.

23 Q Okay. Is your memory refreshed about the number?

24 A That's the voucher connection with the case, yes.

25 Q Well, I'm showing you -- let me bring it up to you so

St. John - Direct - Paul

2139

1 that you can see it.

2 THE COURT: What are you trying to adduce here?

3 MS. PAUL: The voucher number, your Honor.

4 THE COURT: You need the voucher number?

5 MS. PAUL: Yes.

6 THE COURT: Is that voucher in evidence?

7 MS. PAUL: No.

8 THE COURT: So why do you need the number, then?

9 MS. PAUL: Your Honor, it's regarding ballistics.

10 THE WITNESS: Okay.

11 Q Okay. I see you also have your memo book there. If it's
12 easier for you to refresh your memory with your memo book --

13 A You need me to read the voucher number?

14 Q Yes.

15 A It's G044950.

16 Q And you said that you arrested Mr. Hardy and Mr. Sessoms.
17 After that, do you know what happened to the case?

18 A No, I do not. I believe it was deferred.

19 Q What does that mean, "deferred"?

20 A That the D.A.'s Office didn't want to prosecute, at that
21 time.

22 MS. PAUL: No further questions.

23 THE COURT: Any cross-examination?

24 MR. RUHNKE: Yes, your Honor.

25

St. John - Cross - Ruhnke

2140

1 CROSS-EXAMINATION

2 BY MR. RUHNKE:

3 Q Good morning.

4 A Good morning.

5 Q This shooting, as you told us, occurred on the sixth
6 floor of the projects?

7 A I believe so.

8 Q And, as you say, the case was not prosecuted against
9 Damion Hardy, correct?

10 A That's correct.

11 Q And the case was prosecuted, though, against a guy named
12 Robert Footman; is that correct?

13 A I do not know.

14 Q Okay. And you testified that Mr. Kennedy, Marcel
15 Kennedy, was 17 years old at the time he was shot?

16 A Approximately.

17 Q Do you know how many times he was shot?

18 A In my memo book I wrote eight to ten times.

19 Q Eight to ten times?

20 A I do not know exactly.

21 Q It's refreshed by your book?

22 A Yes.

23 Q This is 20 years ago, right?

24 A Yes.

25 MR. RUHNKE: Nothing further.

St. John - Cross - Ruhnke

2141

1 THE WITNESS: Thank you.

2 THE COURT: Anyone else wish to question?

3 MR. HERMAN: Judge, I'm just seeking a limine
4 instruction. This is a racketeering act and not charged --

5 THE COURT: This has nothing do with Granton, right?

6 MR. HERMAN: Thank you, Judge.

7 THE COURT: This is another example where evidence
8 is being offered against one of the two defendants. In this
9 situation, it's being offered against the defendant Hardy.
10 Nothing to do with Granton. Okay.

11 You may step down. Thank you very much.

12 Next witness.

13 MR. AMATRUDA: Your Honor, the government calls
14 Francis Tegano, who is Number 73.

15 THE CLERK: Good morning. You can remain standing,
16 and raise your right hand. Do you affirm to tell the truth?

17 THE WITNESS: Yes.

18 THE CLERK: Thank you. Please have a seat. Please
19 state and spell your name.

20 THE WITNESS: My name is Francis Tegano,
21 T-e-g-a-n-o.

22 FRANCIS TEGANO,
23 called as a witness by the government, having been first duly
24 sworn, was examined and testified as follows:

25 MR. AMATRUDA: My I, your Honor?

Tegano - Direct - Amatruda

2142

1 THE COURT: You may inquire.

2 MR. AMATRUDA: Thank you.

3 DIRECT EXAMINATION

4 BY MR. AMATRUDA:

5 Q Mr. Tegano, are you retired from the New York City Police
6 Department?

7 A Yes, I am.

8 Q What year did you retire?

9 A I retired in 2004.

10 Q How many years did you spend with the police department?

11 A Twenty years.

12 Q Were you part of the -- did you work in the Crime Scene
13 Unit at some point?

14 A Yes, I worked in the Crime Scene Unit for 12 years.

15 Q What years, if you recall?

16 A From '93, up until I retired in 2004.

17 Q So you were with the Crime Scene Unit on June 10th of
18 2000; is that correct?

19 A Yes.

20 Q On that day, did you process a crime scene at Marcy
21 Avenue and Quincy Street in Brooklyn, New York?

22 A Yes, I did.

23 Q And have you looked at some of the paperwork that was
24 generated from that crime scene?

25 A Yes, I did.

Tegano - Direct - Amatruda

2143

1 Q And is it safe to say that you hadn't had any independent
2 recollection, as you're sitting here, of what the crime scene
3 was back in 2000?

4 A No, I did not.

5 Q Have you looked at the documents -- do you know what your
6 role was at that crime scene?

7 A My role was to assist Detective Abraham Rochester, who
8 was the catching detective for this case.

9 Q What are, briefly, some of the things you do as the
10 assisting detective?

11 A I take notes for him. I may get him more equipment.
12 I'll help him search for evidence.

13 Q All right. Based on the documents in your review of the
14 crime scene photos -- I'm going to show you what's been marked
15 as Government Exhibit 600A through 600F, as in Frank. And are
16 these crime scene photos from that crime scene?

17 A Yes, they are.

18 Q And we reviewed these yesterday at my office?

19 A Correct.

20 MR. AMATRUDA: I would move 601A through F into
21 evidence.

22 THE COURT: Hearing no objections, in evidence.

23 MS. BARRETT: I'm sorry, your Honor.

24 THE COURT: 601A through -- A through D is already
25 in evidence.

Tegano - Direct - Amatruda

2144

1 MR. AMATRUDA: Okay. Your Honor, I have --

2 THE COURT: What are you talking about now?

3 MR. AMATRUDA: E and F, I wanted to add.

4 THE COURT: You want E and F as well?

5 MR. AMATRUDA: Yes, your Honor.

6 THE COURT: A and D is not sufficient for your
7 purposes?

8 MR. AMATRUDA: No, your Honor. It's because there's
9 one that shows a car that has ballistic damage to it.

10 THE COURT: 601E and F?

11 MR. AMATRUDA: Yes.

12 THE COURT: All right.

13 MS. BARRETT: Your Honor, I'm trying to locate
14 those.

15 MR. AMATRUDA: Here. I'll show them to counsel.

16 MS. BARRETT: We just got these this morning, that's
17 why, your Honor.

18 THE COURT: You need E and F in?

19 MR. AMATRUDA: Yes.

20 THE COURT: All right.

21 (Government's Exhibits 601E and F were received in
22 evidence.)

23 MR. AMATRUDA: Thank you.

24 Q And at that crime scene, was there ballistics evidence
25 recovered?

Tegano - Direct - Amatruda

2145

1 A Yes, there was.

2 Q Specifically what?

3 A There were four discharged shell casings.

4 Q What caliber were those shell casings?

5 A They were .380.

6 Q And, lastly, I'm going to show you what's been marked for
7 identification as Exhibit 600A. What is that?

8 A That is a sketch of the corner of Marcy and Quincy
9 Street. That was drawn by Detective Rochester.

10 Q Does that sketch fairly and accurately show the placement
11 of the different items that were placed at the crime scene?

12 A Yes.

13 MR. AMATRUDA: Move 600A into evidence.

14 THE COURT: Any objection.

15 MS. BARRETT: No objection, your Honor.

16 THE COURT: 600A in evidence, at this time.

17 (Government's Exhibit 600A was received in
18 evidence.)

19 Q So all I wanted you to point out, and that will be it,
20 are there -- there are four dots that are labeled AR1 through
21 4. Can you explain to the jury what those represent?

22 A Those represent the four discharged shell casings, and
23 they're initialled A.R. for Abraham Rochester, and they're 1
24 through 4 in numeric order.

25 Q Lastly, there was an amount of blood on the pavement, as

Tegano - Direct - Amatruda

2146

1 well as the shell casings?

2 A Yes, that's correct.

3 MR. AMATRUDA: I have nothing further. Thank you.

4 MS. BARRETT: No questions.

5 THE COURT: Any questions? All right. You may step
6 down. Thank you very much.

7 Next witness.

8 MS. DAYANANDA: The government calls Dr. Yvonne
9 Milewski, 55 on your list, your Honor.

10 THE CLERK: Good morning, Doctor. Take the witness
11 stand, please.

12 THE WITNESS: Good morning.

13 THE CLERK: I ask if you can remain standing, and
14 raise your right hand. Do you affirm to tell the truth?

15 THE WITNESS: I do.

16 THE CLERK: Thank you. Please have a seat.

17 THE WITNESS: Thank you.

18 THE CLERK: Please state and spell your name.

19 THE WITNESS: My first name is Yvonne, Y-v-o-n-n-e.

20 My last name is Milewski, M-i-l-e-w-s-k-i.

21 THE CLERK: Thank you.

22 YVONNE MILEWSKI,

23 called as a witness by the government, having been first duly
24 sworn, was examined and testified as follows:

25 THE COURT: Your witness.

Milewski - Direct - Dayananda

2147

1 MS. DAYANANDA: Thank you, your Honor.

2 DIRECT EXAMINATION

3 BY MS. DAYANANDA:

4 Q Good morning, Dr. Milewski.

5 A Good morning.

6 Q Can you tell the jury where you work?

7 A I work for the Kings County facility of the Office of
8 Chief Medical Examiner for New York City.

9 Q What's your title there?

10 A I'm deputy chief medical examiner in charge of Kings
11 County operations.

12 Q What does that mean?

13 A Basically means I'm the onsite supervisor for the
14 Brooklyn office for Medical Examiner's Office.

15 Q Can you describe your educational background for the
16 jury?

17 A I attended Northwestern University, where I received my
18 Bachelor's of Science and my M.D. degree. I next completed
19 year of research at Temple University. Then I completed a
20 medical internship at Lankenau, L-a-n-k-e-n-a-u, Hospital.
21 The next stage in my training was three years of anatomic
22 pathology training, two years at the University of California
23 San Francisco, and one year at NYU.

24 I next completed year of fellowship in the
25 subspecialty area of forensic pathology at the Medical

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1 Examiner's Office in New York City. I remained on staff for
2 11 years and advanced to becoming the deputy chief in charge
3 of Bronx Operations. Prior to taking an academic sabbatical,
4 I went to Columbia University for two years and did a research
5 fellowship in the area of neuropathology. I next went to
6 Texas, where I served as deputy chief medical examiner in
7 Galveston.

8 THE COURT: There's not going to be any exception to
9 her qualifications. She's here to testify.

10 Would you like to impress the jurors a little bit
11 more on this rainy day?

12 THE WITNESS: I'm pretty old, so I've done a lot of
13 things.

14 THE COURT: Take another two or three hours to tell
15 us all the things you've done, whatever time you want. Go
16 ahead.

17 THE WITNESS: I was describing my background and
18 training.

19 THE COURT: It's very impressive.

20 MS. DAYANANDA: Your Honor, obviously we're going to
21 move to qualify Dr. Milewski as an expert. I can apply
22 further foundation if the Court --

23 THE COURT: I suspect that there's not going to be
24 any objections.

25 MR. RUHNKE: There's no objection.

Milewski - Direct - Dayananda

2149

1 MR. HERMAN: No objection.

2 Q Dr. Milewski, have you testified in court before?

3 A Yes.

4 Q About how many times?

5 A Hundreds of times. I don't know how many hundreds.

6 Q And I'm sure I'll get a similar answer, but about how
7 many autopsies have you performed?

8 A Thousands of autopsies.

9 Q You're Board Certified?

10 THE COURT: Let's get to it. Go ahead.

11 Q Can you tell the jury what pathology is?

12 A Pathology is a subspecialty area of medicine. It deals
13 with the origin of disease.

14 THE COURT: Tell us about the autopsy. Come on.
15 Let's go. You can direct your questions right to what you
16 want her to talk about.

17 Q Okay. There's going to be -- as a result of a subpoena
18 given to you, Dr. Milewski, did you review eight autopsies in
19 relation to this case?

20 A Yes.

21 Q I'm going to go through the names. Michael Colon, James
22 Hamilton, Darryl Baum, Tyrone Baum, Ivery Davis, Johan Camitz,
23 Troy Singleton, and Lamel Lawson?

24 A Yes.

25 Q Now, as part of your review, did you review the original

Milewski - Direct - Dayananda

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1 reports for each of these autopsies?

2 A Yes.

3 Q Did you review the original medical examiner's notes that
4 go along with that report?

5 A Yes.

6 Q And did you also review photographs?

7 A Yes.

8 Q And can you just describe to the jury generally what --
9 how many photographs accompanied --

10 THE COURT: One second. Doctor, we can get to the
11 heart of this thing. You probably prepared yourself, having
12 testified thousands of times before, to testify in this
13 particular proceeding by looking at all of the relevant
14 documents, correct?

15 THE WITNESS: Yes.

16 THE COURT: You can go right to it.

17 MS. DAYANANDA: Sure. The government moves to
18 admit Government's Exhibit 80 through 86.

19 THE COURT: Those are the autopsy reports?

20 MS. DAYANANDA: They are not the reports,
21 your Honor. Just the body diagrams and photographs.

22 THE COURT: We need all of this?

23 MS. DAYANANDA: There's eight victims. Yes, Judge.

24 THE COURT: What do you want? 80A through what?

25 MS. DAYANANDA: Number 80 through 86.

Milewski - Direct - Dayananda

2151

1 THE COURT: Eighty through eighty-six?

2 MS. DAYANANDA: Correct.

3 THE COURT: I don't have that on my list.

4 MS. DAYANANDA: Your Honor, I think there's a
5 supplemental exhibit list.

6 THE COURT: I'm going off of the original one. Do
7 you really need all these things?

8 MS. DAYANANDA: Yes.

9 THE COURT: I'm not so sure you do. Let's see how
10 it goes. Continue with your questions.

11 MS. DAYANANDA: Mr. Herman took the exhibits, so we
12 have to pause here for a second.

13 THE COURT: We have so many exhibits already. Maybe
14 we can do with less.

15 MR. HERMAN: These aren't body photographs.

16 THE COURT: Objection sustained. Next question.

17 Q Turning to the autopsy of Michael Colon, when was that
18 autopsy performed?

19 A April 15th, 1998.

20 Q What was the cause of death?

21 A It was a gunshot wound to the torso that perforated the
22 heart and aorta.

23 Q How many gunshot wounds were there?

24 A There was one gunshot wound.

25 MS. DAYANANDA: These were all provided to you,

Milewski - Direct - Dayananda

2152

1 Counsel, so can I get them back now?

2 THE COURT: Ms. Dayananda, just have her testify
3 about the cause of death for all of these folks. That's what
4 I want to question her about. I don't think there's going to
5 be any -- listen to me. If there's any significant
6 cross-examination about this, I'll reconsider the offer in
7 evidence. Right now we don't need it. Next question.

8 MS. DAYANANDA: Your Honor, I understand --

9 THE COURT: You're finished with number one. Go on
10 with the next one.

11 MS. DAYANANDA: Your Honor, I understand the cause
12 of death is not at issue here, but the method and the location
13 of the gunshot wounds corroborate the government's witnesses.

14 THE COURT: You can ask her those questions.

15 Q Turning to Michael Colon, Dr. Milewski, can you tell the
16 jury where specifically he was shot?

17 A Entrance wound was the front of the chest.

18 Q What do you mean by entrance wound?

19 A That's where the bullet entered the body, and the
20 breastplate in front of the chest.

21 Q Were there any other gunshot wounds?

22 A A bullet exited out the left back. There were no other
23 entry wounds.

24 Q Was there anything that you can determine, in terms of
25 the range of the shot?

Milewski - Direct - Dayananda

2153

1 A There was no evidence of close-range fire.

2 Q And do you know if Mr. Colon was brought to the scene or
3 from the hospital?

4 A He was brought from the hospital.

5 Q Do you know the age of the victim?

6 A Age is given at 28 years.

7 Q Did you also review the autopsy of James Hamilton?

8 A Yes.

9 Q When was that autopsy performed?

10 A August 12th in the year 2000.

11 Q And the autopsy was August 12th. Do you know the date of
12 the actual incident?

13 A August 1st, 2000.

14 Q What was the cause of death?

15 A The cause of death was gunshot wounds to the torso and
16 arm that injured the intestine and blood vessels, with
17 complications.

18 MS. DAYANANDA: Your Honor, I'm going to move
19 Government Exhibit 81 into evidence. It's the body diagram.

20 THE COURT: I'm not going to allow it in now. If
21 there's any cross-examination where that becomes relevant,
22 I'll allow you to do it on redirect. Let's just get out
23 from -- the testimony of the cause of death from all those
24 folks and whatever you want to adduce. I doubt that anyone's
25 going to question her credibility here. She's been on

Milewski - Direct - Dayananda

2154

1 hundreds and hundreds of autopsies. She's here as an expert.
2 I want to go directly to her testimony. We've had enough
3 exhibits in this case already. We don't need any more unless
4 it's absolutely necessary. I don't see where it's absolutely
5 necessary now. Next question.

6 MS. DAYANANDA: Your Honor, this is absolutely
7 necessary.

8 THE COURT: I don't agree. Next question. We'll
9 see what kind of questions are elicited, if any, on
10 cross-examination, and then I'll reconsider your concerns.

11 Q How many gunshot wounds were there to James Hamilton?

12 A A total of three gunshot wounds to the body.

13 Q Can you tell us where those gunshot wounds were?

14 A Two were to the left back, and one is to the back of the
15 right arm.

16 Q And can you demonstrate or show us, in terms of the body,
17 in terms of where it was on the back, or would an exhibit help
18 you, Dr. Milewski?

19 A I could show you on the diagram where those wounds are.

20 MS. DAYANANDA: The government moves to admit
21 Government Exhibit 81, at this time.

22 THE COURT: I'll let 81 in.

23 (Government's Exhibit 81 was received in evidence.)

24 THE COURT: Go ahead.

25 That's going to help you testify?

Milewski - Direct - Dayananda

2155

1 THE WITNESS: Yes.

2 Q Showing you Government Exhibit 81, is this the body
3 diagram that was done related to the death of James Hamilton?

4 A Yes.

5 Q Can you show -- using this exhibit, can you show the jury
6 where those gunshot wounds were?

7 A I'm not able to point, but there are three circles on the
8 left back.

9 Q If you touch the screen, actually?

10 A Okay. These two of this closer three are entry wounds,
11 and that is an entry wound in the back of the right arm.

12 Q Just to be clear, looking at the diagram, they're all
13 entry wounds to the back; is that correct?

14 A Yes.

15 Q And you said three in total?

16 A Yes.

17 Q And were any of those gunshot wounds immediately
18 incapacitating?

19 A No.

20 Q What does that mean?

21 A That means that the individual died from internal
22 hemorrhage. It takes time to hemorrhage from wounds. This
23 individual would have had some time to move about until he
24 lost a significant blood volume.

25 Q Were any bullets recovered as part of this autopsy?

Milewski - Direct - Dayananda

2156

1 A No, all bullets exited out of the body.

2 Q Do you know the age of this victim?

3 A Thirty-seven years.

4 Q Moving on to the autopsy of Darryl Baum, when was that
5 autopsy done?

6 A June 11th in the year 2000.

7 Q What was the immediate cause of death?

8 A Immediate cause of death is a single gunshot wound to the
9 head.

10 Q And do you know how many gunshot wounds in total?

11 A There were two total ones to the head. One produced only
12 superficial injuries. One went on to enter the head and cause
13 damage to the brain.

14 Q Do you know which side the immediately incapacitating
15 gunshot wound was?

16 A That entry wound was in the right temple.

17 Q I'm sorry. How many in total?

18 A Two.

19 Q Were you able to tell anything from the range of the
20 shot?

21 A There's no evidence of close-range fire.

22 Q And were any bullets recovered for this particular
23 autopsy?

24 A Yes.

25 Q Can you describe to the jury what happens when the

Milewski - Direct - Dayananda

2157

1 Medical Examiner's Office recovered a bullet?

2 A When a bullet is recovered from the body, we document
3 where we recovered the bullet from. We might inscribe or
4 engrave a symbol that we'll recognize, potentially, at a
5 future time, that bullet. And we'll secure it in an evidence
6 envelope, and it eventually becomes transport to law
7 enforcement.

8 Q And you said it's transferred to law enforcement; is that
9 right?

10 A Yes.

11 Q Do you know where it goes from there?

12 A It usually goes to the ballistic laboratory, and they
13 have their procedures.

14 Q Just in terms of the gunshot wound to the head, did you
15 say it was on the right side? I'm sorry.

16 A Yes.

17 Q Do you know the age of this victim?

18 A Thirty-four years.

19 Q Okay. Turning to the autopsy of Ivery Davis, can you
20 tell us when that autopsy was performed?

21 A August 10th, in the year 2000.

22 Q What was the cause of death?

23 A Cause of death are gunshot wounds to the torso that
24 injured the heart, lung and diaphragm.

25 Q Was there more than one gunshot wound to Mr. Davis?

Milewski - Direct - Dayananda

2158

1 A Yes. There are three entry wounds to the left back.

2 Q And can you describe where those are? Would a diagram
3 help you?

4 THE COURT: Why don't you save that for redirect, if
5 necessary. Okay. I'm not going to preclude you. I'm moving
6 you along now. Let her describe where the wounds were. She
7 knows where they are. If there's any question about that, you
8 can put the diagram in on redirect. Okay. Next question.

9 Q Dr. Milewski, can you tell the jury where the gunshot
10 wounds were?

11 A Yeah. The three entry wounds are close to the left
12 shoulder blade.

13 Q And those were the entrance wounds; is that right?

14 A There are three entry wounds, yeah.

15 Q Were any of the bullets recovered?

16 A Three bullets from those three wounds were recovered.
17 There were two additional bullets from older gunshot wounds
18 that have nothing to do with this shooting.

19 Q Were any bullets recovered?

20 A Yes, three from the three entry wounds to the back and
21 two older wounds.

22 Q Okay. In addition to the bullet injury, did you observe
23 any other injury to Mr. Davis?

24 A Yes. There are injuries to the soft tissue of the body
25 of the face, the back and the head, and to the legs, in the

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1 form of abrasions to the face; an impact site to the back of
2 the head, a laceration over the left knee, and a fractured
3 right ankle.

4 Q I'm going to show you Government Exhibit 84B.

5 MS. Dayananda: Your Honor, this is necessary.

6 Q Do you recognize this photo?

7 A Yes.

8 Q And does that depict the ankle injury that you described?

9 A Yes.

10 MS. DAYANANDA: Your Honor, the government moves to
11 admit 84B.

12 THE COURT: Any objection?

13 MR. RUHNKE: Yes.

14 MS. BARRETT: Yes.

15 THE COURT: There's an objection?

16 MR. RUHNKE: Yes.

17 MS. BARRETT: Yes.

18 THE COURT: Basis of the objection.

19 MR. RUHNKE: Objection is it's particularly
20 gruesome. It depicts an injury that occurred during the car
21 accident and nothing to do with homicide, and object to it.

22 THE COURT: Objection sustained. Next question.

23 Q Dr. Milewski, can you describe a little bit more about
24 how an ankle injury could occur in such a manner?

25 A This individual was operating a motor vehicle at the time

Milewski - Direct - Dayananda

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1 of the shooting, and this kind of fracture, the distal part of
2 the leg or right ankle, is most likely due to a very violent
3 impact to the bottom of that foot, such as can be sustained by
4 applying the leg in a very rapid fashion to the brake pedal.

5 Q And in terms of that impact, can you describe how --
6 what it would take for an ankle to break in the manner that
7 you saw that on Mr. Davis?

8 A Reflects a certain amount of blunt force was transferred
9 to the right foot on impact.

10 Q And how old was Mr. Davis at the time?

11 A How old was he? I'm sorry. Twenty-seven years.

12 Q At the same time, was there an autopsy performed of Johan
13 Camitz?

14 A Yes.

15 Q And can you describe his injury to the jury?

16 A So this case demonstrated widespread blunt force trauma
17 injuries to the body. By that I mean that the body sustained
18 its injury in application of severe degrees of blunt force.

19 There is an impact to the back of the head. There is a
20 fracture of the cervical, the next spine, with an injury of
21 the spinal cord. There are impact sites to the lower legs, a
22 fracture on the right side, and many abrasions, which are
23 scrapes and bruises, to both legs. By legs I mean below the
24 level of the knee. So this constellation of injury are
25 typical for what one sees when there's a pedestrian that's

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1 impacted by a motor vehicle. The first impact is to the lower
2 extremities, with the individual standing. If enough force is
3 transmitted to the body, with that impact, the body will go up
4 into the air, for lack of a better way of saying it, and
5 strike the head on descent, and that's exactly what we see in
6 this body.

7 THE COURT: That's consistent with somebody being
8 hit by a car, right?

9 THE WITNESS: Right.

10 THE COURT: Next question.

11 Q What was the cause of death?

12 A The cause of death is blunt force trauma to the neck,
13 which resulted in a fracture of the cervical column and
14 complete transection of the spinal cord.

15 Q Just to clarify, for Mr. Davis, as well as Mr. Camitz,
16 was there an investigator sent out to the scene by the Medical
17 Examiner's Office?

18 A Yes.

19 Q What's the purpose of that?

20 A If there -- if an individual dies outside of a hospital
21 or healthcare setting, whether it's a public area or in their
22 homes, we send an investigator to the scene to examine the
23 body in place, and to get information about the scene so we
24 can have a good correlation with the injuries, if we see them,
25 and understand how they were sustained.

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1 THE COURT: You like to see the body as soon as
2 possible, I guess, is what your practice is, right?

3 THE WITNESS: Well, we'd see the body sooner if we
4 didn't send the investigator out, yeah, that's true. Somebody
5 in our facility would respond to the scene faster than the
6 body would come in eventually.

7 THE COURT: Next question.

8 Q Was Mr. Camitz brought to the office from the scene or
9 from the hospital?

10 A He was brought from the hospital.

11 Q And Mr. Davis was brought from the scene; is that
12 correct?

13 THE COURT: Does this really matter? Next question.

14 THE WITNESS: The scene.

15 THE COURT: You answered the question. Next
16 question.

17 Q Moving on to Troy Singleton, Dr. Milewski, when was that
18 autopsy performed?

19 A That was performed October 29th, 2001.

20 Q Could you tell us the cause of death for Mr. Singleton?

21 A Single gunshot wound to the head that injured the brain
22 and fractured the skull.

23 Q Were there other gunshot wounds?

24 A Yes.

25 Q How many?

Milewski - Direct - Dayananda

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1 A There were seven other gunshot wounds; four to the torso
2 and three to the lower extremities.

3 Q By lower extremities, what do you mean?

4 A The legs, below the level of the head.

5 Q Okay. You said there was one to the head; is that
6 correct?

7 A Yes.

8 Q Seven others?

9 A Yes, four to the torso, and three between both lower
10 extremities.

11 Q Were any of those gunshot wounds immediately
12 incapacitating?

13 A The gunshot wound to the head was.

14 Q Now, could you describe where specifically those other
15 gunshot wounds were, other than to the head? I'm sure a
16 diagram would help, but do your best.

17 A There's -- the fatal wound is to the back of the head.
18 There are two -- there are four total wounds to the back side
19 of the body, for the back; one on each upper back, so one on
20 the left upper back, one on the right upper back, one just
21 below the left buttock, and one just below the right buttock.

22 THE COURT: Which one of those caused him to die?

23 THE WITNESS: The one to the head.

24 THE COURT: He was shot in the head, right?

25 THE WITNESS: Yes.

Milewski - Direct - Dayananda

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1 THE COURT: And that's what killed him, right?

2 THE WITNESS: Yes.

3 THE COURT: What's your next question?

4 Q The position of the gunshot wounds from the rest of the
5 body, apart from the head, what did that indicate to you?

6 A For the bullet to enter the back of the body, the end of
7 the barrel of the gun has to be facing the back of the
8 individual.

9 Q And the age of this victim, Mr. Singleton?

10 A Thirty-three years.

11 Q I'm sorry. I don't think I brought out the age of
12 Mr. Camitz.

13 A Just a second, please. Thirty-eight years.

14 Q Moving on to Mr. Tyrone Baum, can you tell us when this
15 autopsy was performed?

16 A July 26th, 2003.

17 Q What was the cause of death?

18 A Gunshot wounds to the head and torso that injured the
19 brain and intestines.

20 Q How many gunshot wounds in total?

21 A Three gunshot wounds.

22 Q Can you tell us where?

23 A All three are to the back of the body. One to the head
24 is the back of the body. There's another one at the base of
25 the neck in the back, and another wound at the waistline in

Milewski - Direct - Dayananda

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1 the back.

2 Q Were any of those immediately incapacitating?

3 A Yes.

4 Q Which one?

5 A The one to the head.

6 Q And the two other ones, did they indicate anything to
7 you, as far as the position of the other victim?

8 A The back of the victim had to be facing the end of the
9 barrel of the gun for the bullets to injure the back of the
10 victim.

11 Q What was the age of this victim?

12 A Forty-one years.

13 Q I'm sorry. Which one was the entrance wound? Where did
14 it enter?

15 A There are three; one to the back of the head, one at the
16 base of the neck in the back, and one at the waistline on the
17 back.

18 Q Meaning, it entered from the back, correct?

19 A Correct.

20 Q Moving to Mr. Lamel Lawson, can you tell the jury when
21 that autopsy was performed?

22 A October 23rd, 1999.

23 Q What was the cause of death?

24 A Gunshot wounds to the trunk and extremity that injured
25 heart, lungs, esophagus, and muscles.

Milewski - Direct - Dayananda

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1 Q And how many gunshot wounds in total?

2 A Total of three gunshot wounds.

3 Q And were any bullets recovered?

4 A There was one bullet recovered.

5 Q What was done with that bullet?

6 A Bullet was submitted into evidence.

7 Q And was that provided to law enforcement?

8 A Yes, it's transferred to the Ballistics Unit.

9 Q Was there a particular number that was attached to
10 voucher to the bullet that was recovered?

11 A Yes.

12 Q What was that?

13 A K994883.

14 Q I'm sorry. How many bullets was it?

15 A Just one bullet.

16 MS. DAYANANDA: I have nothing further. Thank you.

17 THE WITNESS: Thank you.

18 THE COURT: Any cross-examination?

19 MR. RUHNKE: No, sir.

20 THE COURT: Mr. Beecher?

21 MR. BEECHER: No.

22 THE COURT: So members the jury, I'm not being
23 critical of Ms. Dayananda; they're very, very complete with
24 trying to get before you all sorts of things. You've had lots
25 of exhibits. You've been here for many days. And it comes

Milewski - Direct - Dayananda

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1 towards the end of the trial, where I push the lawyers a
2 little bit to move the case along. If we don't need it, then
3 I'm not going to allow it into evidence. If it's necessary,
4 then we'll allow it into evidence. But here's a situation
5 where this expert testified about the cause of death. There's
6 no cross-examination. We didn't need to burden the record
7 further with a whole bunch of diagrams and extend questioning
8 that wouldn't be relevant. Okay. So that's why I did that,
9 and I'm probably going to do more of that between now and the
10 end of the trial. And counsel knows Judge Block's style.
11 Okay.

12 Thank you very much. We appreciate your testifying
13 for what, the 345th time?

14 THE WITNESS: Something like that, yes.

15 THE COURT: Okay. Next witness.

16 MR. AMATRUDA: Your Honor, the government calls
17 Patrick Murphy.

18 THE COURT: Okay. What number is that?

19 MR. AMATRUDA: Number 7, your Honor.

20 THE CLERK: Good morning, Mr. Murphy.

21 THE WITNESS: Good morning.

22 THE CLERK: I ask if you can remain standing and if
23 you can raise your right hand. Do you affirm to tell the
24 truth?

25 THE WITNESS: Yes.

Murphy - Direct - Amatruda

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1 THE CLERK: Thank you. Please have a seat, and
2 please state and spell your name.

3 THE WITNESS: Patrick Murphy, M-u-r-p-h-y.

4 PATRICK MURPHY,

5 called as a witness on behalf of the government, having been
6 first duly sworn, was examined and testified as follows:

7 THE COURT: You didn't march in the Irish parade
8 this year?

9 THE WITNESS: No, I did not, sir, not this year.

10 MR. AMATRUDA: Thank you, your Honor.

11 DIRECT EXAMINATION

12 BY MR. AMATRUDA:

13 Q Mr. Murphy, you're retired from the New York City Police
14 Department, correct?

15 A Yes.

16 Q What year did you retire?

17 A 2001.

18 Q How long did you serve with the police department?

19 A A little over 20 years.

20 Q At one point you were assigned to the Crime Scene Unit,
21 correct?

22 A That's correct.

23 Q What time frame were you working at the Crime Scene Unit?

24 A From, probably, 1991 until May 30th, 2001.

25 Q Okay. So on December 22nd of 2000, you were with the

Murphy - Direct - Amatruda

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1 Crime Scene Unit, correct?

2 A That's correct.

3 Q And did you process a crime scene in front of -- or near
4 463 DeKalb Avenue in Brooklyn?

5 A Yes, I did.

6 Q Do you know the name of the victim involved in that crime
7 scene?

8 A Became known to me as Troy Davis.

9 Q That was a homicide, correct?

10 A That's correct.

11 Q Looking at Government Exhibits 401B, D, and E --

12 MR. AMATRUDA: Just three, your Honor.

13 THE COURT: B, C, and D, did you say?

14 MR. AMATRUDA: B, as in boy, D, as in David, E, as
15 in Earnest.

16 THE COURT: Those are crime scene photos?

17 MR. AMATRUDA: They are.

18 THE COURT: No objection to that, I suspect. In
19 evidence, at this time. Go ahead.

20 (Government's Exhibit 401B, D and E were received
21 in evidence.)

22 Q If you can just explain the -- I'm just going to show you
23 very briefly Government Exhibit 401D, as in David. And
24 showing you that, is -- there's a phone booth that's there; is
25 that correct, Mr. Murphy?

Murphy - Direct - Amatruda

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1 A It's a phone stand. It's not the old fashioned booth.

2 Q Okay. And near that phone stand, I'm going to point
3 under where the actual telephone is. There appears to be some
4 red there. Do you know what that is?

5 A Yes, that was blood.

6 Q Okay. And I'm going to show you what's been marked as
7 401B, as in boy. Could you just tell us what that shows?

8 A That shows an apartment building across the street --

9 Q Okay.

10 A -- from the scene.

11 Q Is that 456 DeKalb Avenue?

12 A Yes, it is.

13 Q Did you make a crime scene diagram?

14 A Yes, I did.

15 Q All right. I'm showing you 400 for identification. Is
16 that your crime scene diagram for that particular crime scene?

17 A Yes, it is.

18 THE COURT: That's in evidence, at this time.

19 MR. AMATRUDA: Thank you, your Honor. No further
20 questions.

21 THE COURT: Any cross-examination of this witness?

22 MR. RUHNKE: Not from us, your Honor.

23 MR. HERMAN: Again, this is not a charged homicide,
24 this is an enterprise act.

25 THE COURT: This is enterprise act. This is

Murphy - Direct - Amatruda

2171

1 considered to have you assess whether or not there is an
2 enterprise here. And when I explain the charge to you, which
3 is going to be lengthy, all of that will become clear to you.

4 Thank you. You may step down. Make sure you march
5 in the parade the next year.

6 THE WITNESS: I certainly will.

7 THE COURT: With a name like that.

8 THE WITNESS: Unfortunately I had to work.

9 MS. PAUL: The government calls Mr. Duane White.
10 That's Number 49.

11 THE CLERK: Good morning, Mr. White. Take the
12 witness stand. Ask if you can remain standing and is you
13 could raise your right hand. You affirm to tell the truth?

14 THE WITNESS: I do.

15 THE CLERK: Thank you. Please have a seat. Please
16 state and spell your name.

17 THE WITNESS: My name is PO Officer Duane White,
18 Dash Number 2154.

19 DUANE WHITE,
20 called as a witness by the government, having been first duly
21 sworn, was examined and testified as follows:

22 THE COURT: You're still a police officer, and you
23 remember your badge number?

24 THE WITNESS: Yes.

25 THE COURT: Your witness.

White - Direct - Paul

2172

1 DIRECT EXAMINATION

2 BY MS. PAUL:

3 Q Where do you work?

4 A Philadelphia PD.

5 Q How long have you worked there?

6 A Seventeen years.

7 Q So in August of 2003, were you working in the
8 Philadelphia Police Department?

9 A That's correct.

10 Q And I'm going to direct your attention to
11 August 22nd, 2003. Did you respond to a report of a
12 suspicious vehicle?

13 A That's correct.

14 Q Where were you working when that happened?

15 A I was working in 196 car, patrol vehicle, in full
16 uniform, marked vehicle.

17 Q That means you were in a marked vehicle? That's the
18 number of the vehicle you just said?

19 A That's correct.

20 Q Were you working by yourself?

21 A Yes, I was working solo.

22 Q So what happened?

23 A On that date and time, I was doing a routine patrolling
24 in the area, when I was flagged down by an officer named Craig
25 Jones, Badge Number 2096, in reference to a vehicle that's

White - Direct - Paul

2173

1 been sitting in front of his property for the last three
2 weeks. So I investigate by running the tags through NCIC,
3 PCIC. Information came back it was wanted for leaving the
4 scene of a homicide in New York.

5 Q Okay. And you just said NCIC and PCIC. Are those
6 databases that you use?

7 A That's correct. Also radioed, and also we have an MDT
8 inside our vehicle that we use, too.

9 Q All right. So those -- that's where you learned of the
10 alert that this car was related to a homicide in New York?

11 A That's correct.

12 Q And you said that off-duty Officer Jones saw the car
13 sitting on his property. That's his home?

14 A In front of his property.

15 Q I'm going to show you one exhibit that is not yet in
16 evidence 1,006B. Do you recognize that?

17 A Yes, that's the tag.

18 Q That's the tag of the vehicle that you found on
19 August 23rd, 2003?

20 A Yes, that is.

21 MS. PAUL: I'll offer it, at this time.

22 THE COURT: All right. In evidence.

23 (Government's Exhibit 1006B was received in
24 evidence.)

25 Q I'm going to show you 1,006A and B, together on the

Proceedings

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1 screen there. Can you tell us what that is?

2 A Yes, the top picture is the vehicle, the minivan
3 investigated, and also the tag that was on top on the vehicle.

4 Q All right. So after you saw the vehicle, did you observe
5 the outside of the vehicle?

6 A Yes, I looked on the exterior of the vehicle, and then I
7 notified the detective relative to the information I received
8 over the police radio, and also on my computer inside the
9 vehicle, in reference to the information I received.

10 Q And from the outside of the vehicle, was there anything
11 to you that indicated that it had been broken into, in any
12 way?

13 A No.

14 MS. PAUL: Nothing further.

15 THE COURT: Any questions of this witness?

16 MS. BARRETT: No, your Honor.

17 MR. HERMAN: No, your Honor.

18 THE COURT: You may step down. I think we can take
19 our mid-morning break, about 15 minutes now, and then when you
20 return, we'll have more witnesses. Don't talk about the case.

21 THE CLERK: All rise.

22 (Recess in proceedings.)

23 (Outside the presence of the jury.)

24 THE COURT: Let's bring the jurors back. Do we have
25 a witness ready to come into the court?

Proceedings

2175

1 MR. AMATRUDA: Yes.

2 THE COURT: Let's bring that person in, in the
3 meantime.

4 MS. DAYANANDA: Yes, one second.

5 MR. AMATRUDA: I just wanted to raise with you, we
6 are -- our next witness is -- and then after that we were
7 going to call Dwayne Myers. Mr. Myers is -- they have him in
8 the car, but the last I'd heard he was stuck in the gate. The
9 gate was broken at the MDC, so I was going to propose that
10 we -- after this witness, that we break early for lunch.

11 THE COURT: How long will this witness be?

12 MS. DAYANANDA: Twenty minutes or so. Half an hour.

13 THE COURT: You could consider introducing those
14 diagrams and use up some of the time that way.

15 MS. DAYANANDA: That's really funny, Judge. Thank
16 you.

17 MS. BARRETT: Objection.

18 THE COURT: Let's see how it goes. Do you have
19 anybody else outside other than Mr. Myers lined up?

20 MR. AMATRUDA: That's what we have. And then this
21 afternoon, we had lined up our ballistics person, who is just
22 coming in this afternoon, and we have two very quick witnesses
23 that --

24 THE COURT: So you expect Mr. Myers will consume the
25 whole afternoon?

Proceedings

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1 MR. AMATRUDA: I think so, Judge.

2 THE COURT: And that's your last cooperator?

3 MR. AMATRUDA: Yes, Judge. And then after that I
4 have a phone chart witness, and we have just maybe a couple
5 quick ones that will be, like, this morning.

6 THE COURT: So we have a sense of it. Your case
7 will wrap up, in all likelihood, tomorrow morning.

8 MR. AMATRUDA: I think so, Judge.

9 THE COURT: Defense counsel is aware of all this,
10 and you talk about what you plan to do, if anything, as a
11 result of all this. Let's get the witness in.

12 (In the presence of the jury.)

13 THE COURT: Folks, let me give you a heads-up of how
14 our schedule is proceeding. Towards the end of a trial, you
15 have scheduling issues that are more prevalent than, perhaps,
16 at the beginning of the trial. Everybody's working very well
17 to accommodate Judge Block to move the trial along in a nice
18 ordinarily fashion, and I am grateful for all of their
19 efforts.

20 We have this witness, who I am told will take them
21 at 20 minutes or so, and then we have in route from the MDC
22 the last cooperator, Mr. Myers, I guess. And then there's
23 been a glitch there, in terms of getting him transported here,
24 so I think we're going to break for an early lunch after this
25 witness, and, hopefully, we'll have Mr. Myers here, who will

Proceedings

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1 be testifying, perhaps, most of the afternoon, if not all of
2 the afternoon. And then there will be a few more witnesses,
3 probably, maybe tomorrow morning, so I think the way we're
4 proceeding is that the government probably will rest, as the
5 saying goes, in other words, will have presented all of the
6 evidence it wishes you to consider sometime tomorrow morning.
7 And be patient if we have to deal with these types of issues
8 that do crop up from time to time.

9 In the meantime, we're ordering lunch for you today.
10 Its a rainy day. And, Mr. Innelli, I guess you were pretty
11 good at coordinating things, so lunch will be here at 12:30.
12 And you can relax and not go out into this terrible weather
13 today. Let's see who we have now.

14 MS. DAYANANDA: Ashabudeen Sakoor, Number 17 on your
15 list.

16 THE CLERK: Good afternoon, Mr. Sakoor. Ask you to
17 please stand, and raise your right hand. Do you affirm to
18 tell the truth?

19 THE WITNESS: Yes.

20 THE CLERK: Please state and spell your name.

21 THE WITNESS: Ashabudeen Sakoor,
22 A-s-h-a-b-u-d-e-e-n; last name is S-a-k-o-o-r.

23 ASHABUDEEN SAKOOR,
24 called as a witness by the government, having been first duly
25 sworn, was examined and testified as follows:

Sakoor - Direct - Dayananda

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1 THE COURT: Your witness.

2 MS. DAYANANDA: Thank you, your Honor.

3 DIRECT EXAMINATION

4 BY MS. DAYANANDA:

5 Q Good morning, Mr. Sakoor. Can you tell the jury how old
6 you are?

7 A I'm 41 years old.

8 Q Are you working right now?

9 A Yes.

10 Q What type of work do you do, generally?

11 A I'm a cell phone repair technician.

12 Q How long have you been doing that for?

13 A Five years.

14 Q Have you ever been convicted of a crime?

15 A Yes.

16 Q What type of crime?

17 A Assault, criminal sale of controlled substance, and
18 attempted sale of controlled substance.

19 Q Let me start with conviction. Back in 2007, and that was
20 for criminal sale of controlled substance; is that right?

21 A Yes.

22 Q Can you tell the jury briefly what led up to that. Were
23 you selling drugs, at the time.

24 A Yes.

25 Q What types of drugs?

Sakoor - Direct - Dayananda

2179

1 A Cocaine.

2 Q And where were you selling drugs?

3 A In Queens.

4 Q How long did you sell drugs for, at that time?

5 A About four, five years.

6 Q And you also have --

7 MS. BARRETT: Could we have a beginning and end?

8 THE COURT: For or five years. Just give us some
9 time when you did this, some time frame.

10 THE WITNESS: Like from '94 to about '98.

11 Q Can you just briefly describe how you got involved in
12 selling drugs?

13 A In the neighborhood where I used to hang out. I used to
14 go hang out on the street corner, and that's where I picked it
15 up from.

16 Q What neighborhood is that?

17 A Flushing.

18 Q You also mentioned an attempted criminal sale of
19 controlled substance; is that from 1998?

20 A Yes.

21 Q Did you serve any jail time for that?

22 A Yeah, I think they put all that together as one.

23 Q You mean both felonies as one?

24 A Yes.

25 Q How much jail time did you serve?

Sakoor - Direct - Dayananda

2180

1 A Two and a half to five.

2 Q Were you selling cocaine again for that conviction?

3 A Yes.

4 Q You also mentioned an assault conviction. Can you
5 briefly describe to the jury what led to that conviction?

6 A It was at a club, and some gentleman tried to rob me for
7 my chain and my watch.

8 Q What did you do?

9 A Defending myself, I cut one of them, and I ran a few over
10 with my car.

11 Q Do you know if any were injured?

12 A They got stitches.

13 Q And you pled guilty to assault in the second degree?

14 A Yes.

15 Q Is that a felony?

16 A Yes.

17 Q Did you serve time for that?

18 A Yes.

19 Q Okay. And how much time?

20 A That was part of a two and a half to five.

21 Q So that was two felonies for the one time in jail; is
22 that right?

23 A Yes.

24 Q Where did you serve that time?

25 A Orleans Correctional Facility.

Sakoor - Direct - Dayananda

2181

1 Q Where is that?

2 A Albion, New York.

3 Q Showing you what's already been entered into evidence as
4 Government Exhibit Number 38. Do you recognize that
5 individual?

6 A Yes.

7 Q Who is that?

8 A That was Shawn.

9 Q How do you know that person?

10 A I was incarcerated with him.

11 Q At Orleans; is that right?

12 A Yes, at Orleans.

13 Q And did you talk to him during that time?

14 A Yes.

15 Q Would you say you became friendly with him?

16 A Yes.

17 Q While in jail, did you commit any crimes?

18 A May have sold a couple of joints of marijuana.

19 Q You say you might have. You did?

20 A Yes.

21 Q And was Shawn involved in that as well?

22 A Yes.

23 Q And during your time in jail, did you talk about your
24 drug business?

25 A Yes.

Sakoor - Direct - Dayananda

2182

1 Q Just briefly, can you just tell us what you talked about
2 with Shawn concerning your drug business?

3 A What I used to do to make money in the streets before I
4 got arrested.

5 Q Which was what?

6 A We had a service that delivered crack.

7 Q And by service, what do you mean?

8 A You paged us, and we delivered it to your house.

9 Q Was it pretty successful?

10 A Yes.

11 Q Did you also -- were you also involved in heroin selling
12 as well?

13 A No, not before I went to prison.

14 Q Okay. When did you get out of prison?

15 A December 2nd, 2001.

16 Q And did there come a time when you saw Shawn again?

17 A Yes.

18 Q Can you tell the jury what led up to that?

19 A He was coming around, asking my sister when I was getting
20 out, and then when I got out, I contacted him. And he came
21 around, and we started hanging out.

22 Q Where were you hanging out?

23 A He would come to my house.

24 Q Where was your house, at the time?

25 A College Point Queens.

Sakoor - Direct - Dayananda

2183

1 Q Did there come a time when you and Shawn entered a drug
2 transaction?

3 A Yes.

4 Q Can you tell the jury what led to that?

5 A He asked me if I could help him get some heroin for a
6 friend of his, and I got him ten grams of heroin.

7 Q Were you involved in drug selling, at that point?

8 A Yes.

9 Q And this would be in early 2002; is that right?

10 A Yes.

11 Q Did you meet anyone else with Shawn?

12 A The guy that bought the drugs, but I don't remember his
13 name.

14 Q And were you paid for that, those ten grams of heroin?

15 A Yeah.

16 Q Do you remember where you provided that to him?

17 A Excuse me?

18 Q Do you remember where you gave that to Shawn?

19 A I think it was in College Point, by my house.

20 Q He had been to your house; is that right?

21 A Yes.

22 Q Now, at that time, this is early 2002, were you involved
23 in heroin and cocaine or just selling heroin?

24 A A little bit of both. A little bit of both.

25 Q And did you mention that to Shawn?

Sakoor - Direct - Dayananda

2184

1 A Yes.

2 Q Going to direct your attention to July 11th of 2002.

3 What happened to you that day, Mr. Sakoor?

4 A I was kidnapped.

5 Q Can you tell the jury, first of all, where that occurred?

6 A That occurred at a topless bar called Good Vibrations in
7 College Point.

8 Q What time did you get to the bar that evening?

9 A Around 12:00, 12:30.

10 Q That would be 12:30 a.m.?

11 A 12:30 a.m., yes.

12 Q Before you got to the club, where were you?

13 A Home.

14 Q Home, College Point?

15 A Yes.

16 Q Do you remember how you got to the club that day?

17 A I think a friend of mine's gave me a ride.

18 Q When you got to that club, did you speak to anyone
19 inside?

20 A When I was inside, yeah, I spoke to a couple -- an
21 individual.

22 Q Did you know that person?

23 A No.

24 Q Do you remember what you talked about while you were
25 inside?

Sakoor - Direct - Dayananda

2185

1 A We were just talking, just basically about the girls on
2 stage, and I think shoes, and that's about it.

3 Q Did there come a point when you left the club?

4 A Yes.

5 Q Can you tell the jury what happened?

6 A I borrowed a bouncer's phone and went outside to call a
7 cab, and go home, and two gentlemen approached me on both
8 sides with guns out, and they put it to my back and told me to
9 go across the street.

10 Q This is standing outside the club; is that right?

11 A Yes.

12 Q You said two gentlemen. Had you seen those two
13 individuals before?

14 A No.

15 Q Did they each have a gun?

16 A Yes.

17 Q Did you see the guns?

18 A Yes.

19 Q Can you describe either of them?

20 A Just both of them were black.

21 Q Were they large guns or smaller?

22 A They was like handguns, about this big (indicating).

23 Q What did you do when they approached?

24 A I walked across the street.

25 Q What did you do?

Sakoor - Direct - Dayananda

2186

1 A We walked across the street, and then the van door
2 opened, and there was another gentleman with a machine gun in
3 the backseat, and they pushed me in the van. I tried to fight
4 them off, and I couldn't. And they grabbed me and duct-taped
5 my hands and feet, and threw me in the van.

6 Q Now, you said there were two individuals who first
7 approached you, right?

8 A Yes.

9 Q And was there another person with the gun?

10 A It was a driver, and then I think there was one in the
11 back.

12 Q So how many people in total were in that van?

13 A Four. And then the guy from inside came out later.

14 Q The guy from inside?

15 A That I was speaking to, yes.

16 Q He also entered the van?

17 A Yes.

18 Q And you said there was a guy holding a machine gun; is
19 that right?

20 A Yes.

21 Q Could you describe that gun?

22 A It was like this big, black, with a -- with wood on it,
23 wood grip.

24 THE COURT: About two feet?

25 THE WITNESS: Yeah, it was like an AK-47.

Sakoor - Direct - Dayananda

2187

1 Q And for the record, you had -- about two feet up, is
2 that -- was that the length of it, you said?

3 A Yeah, about this big.

4 Q Once you were in the van, you said you started fighting a
5 little bit?

6 A Before I got into the van, yes.

7 Q Then what happened?

8 A They all wrestled me into the van.

9 Q What happened inside the van?

10 A They duct-taped me and put me on the floor.

11 Q When they duct-taped you, what did they duct tape?

12 A Excuse me?

13 Q What part of your body did they duct tape?

14 A My hands, and my feet, and then they later duct-taped my
15 eyes up.

16 Q Were your hands in front of you or behind you?

17 A I think they were in front of me.

18 Q Now, once you were in the van and you were duct-taped, is
19 that when they put the duct tape on your eyes, you said?

20 A Yeah, they put me in supine, and then was asking me
21 questions, and then they duct-taped my eyes.

22 Q What types of questions were they asking you?

23 A That they wanted \$250,000, and I had to take them to
24 where the money was at.

25 Q Did you notice any other vehicles in the area, at the

Sakoor - Direct - Dayananda

2188

1 time?

2 A Not at the time, but later, yes.

3 Q Where is that?

4 A We stopped somewhere, and another car pulled up, and
5 somebody jumped into the van. And the person that jumped in
6 the van was on the phone talking to someone, and they were
7 saying, listen, we know you got the money, we know you got the
8 money. And then they decided to take me to my sister's house.
9 When he got out the van, went back into the other car, and
10 drove me to my sister's house, then I informed them my sister
11 worked for the police. And that's when they got angry, put me
12 back in the van, took me to Brooklyn. I don't know it was
13 Brooklyn until later, though.

14 Q Let me stop you there. You said another person entered
15 the van and was on the phone; is that right?

16 A Yes.

17 Q Did you hear what, if anything, that person was saying on
18 the phone?

19 A He was talking to somebody on the phone, saying, listen,
20 we got him, and he's saying he doesn't have the money. And I
21 guess the other person was telling him that he has the money,
22 he has the money.

23 Q And at that point, you were still in the van, right?

24 A Yes.

25 Q Now, from the club, you said you went to your sister's

Sakoor - Direct - Dayananda

2189

1 neighborhood?

2 A Yes.

3 Q Where is that?

4 A Flushing, Queens.

5 Q Was that nearby?

6 A Yeah, about 10, 15 minutes.

7 Q What kind of neighborhood is Flushing?

8 A It's a nice neighborhood.

9 Q Why did you end up at your sister's place?

10 A Because they thought the money was there.

11 Q Did you direct them to your sister's place?

12 A I think they knew where it was, and I might have told
13 them it was in Flushing.

14 Q Did you tell them then that your sister works for the
15 police department?

16 A Yes.

17 Q What happened then?

18 A They got angry and threw me back in the van.

19 Q Then what happened?

20 A We drove for awhile, and then we stopped. We stopped
21 somewhere. It was by a highway, because I know I heard the
22 cars, and they let me use the bathroom. And then we proceeded
23 somewhere, and then they took me out and carried me into a
24 building.

25 Q Did you know where you were, at that point?

Sakoor - Direct - Dayananda

2190

1 A No, not yet.

2 Q How many people were with you, at that point?

3 A I don't know.

4 Q Where did you go once you got --

5 A I was blindfolded still.

6 Q Where did you go once you got to that building?

7 A We went upstairs, some stairs, and then into an
8 apartment, and they threw me in a room on a bed.

9 Q At that point, how many people were there?

10 A I'm not sure. I just heard maybe, like, three, four
11 people talking.

12 Q Then what happened? About what time do you think this
13 was?

14 A I don't know, like, two, three hours, after they got me
15 in front of the club.

16 Q You said they threw you on a bed?

17 A Yes.

18 Q And were you still tied up, at that point?

19 A Yes, I was duct-taped.

20 Q What happened next?

21 A It got quiet, and then as the night -- as the night went
22 on, the duct tape stopped sticking on my hands, and when I got
23 one of my hands free, I lifted up the one that was over my
24 eyes, and I seen the guy sitting in the doorway with the gun
25 on his lap. So I seen the scissors on the floor, and I picked

Sakoor - Direct - Dayananda

2191

1 up the scissors and cut myself free, and I tried to leave the
2 apartment. When I tried to leave the apartment, he had a fan
3 blowing on him, and I bumped into a wire, and he jumped up and
4 pulled the gun up on me. And when he pulled the gun up on me,
5 I put it under my armpit, and me and him wrestled for the gun
6 for about half an hour to an hour threw this apartment. When
7 I dragged him to the door, and I got the door open, and I seen
8 a neighbor, and told the neighbor if they could call the cops
9 for me.

10 Q What happened then?

11 A His associate came, and they wrestled me back down and
12 hogtied me in the bedroom. And then, like, ten minutes later
13 the cops kicked the door in and rescued me.

14 Q So Mr. Sakoor, I just want to clarify here, Government
15 Exhibit 38, Shawn, did you see him at all the night you were
16 kidnapped?

17 A No.

18 Q Showing you Government Exhibit 33, do you recognize this
19 person this has been entered into evidence?

20 A He looks familiar, but not off the top of my head right
21 now.

22 Q I'm going to show you what's also been entered into
23 evidence as Government Exhibit 900G. Do you recognize that
24 photo?

25 A Yeah, that's the apartment.

Sakoor - Direct - Dayananda

2192

1 Q Is that the bed that you said that they threw you on?

2 A Yes.

3 Q So to back up, you said at some point the duct tape
4 wasn't sticking anymore?

5 A Yeah, it was hot in this apartment.

6 Q Do you remember when?

7 A July 11th.

8 Q At that point, when you were able to see who was left in
9 the apartment, was there more than one person?

10 A I couldn't see behind him, I could just see him in the
11 doorway.

12 Q And you said there was a gun on his lap; is that right?

13 A Yes.

14 Q I'm going to show you what's been entered as Government
15 Exhibit 903A, which has not been entered as of yet. I'm going
16 to show you Government Exhibit 903A. Do you recognize this
17 photo?

18 A Yeah, that's the machine gun.

19 MS DAYANANDA: The government moves to admit 903A
20 into evidence, at this time.

21 THE COURT: All right. No objection. In evidence.

22 (Government's Exhibit 903A was received in
23 evidence.)

24 Q Now that the jury can see it, can you tell us what that
25 is?

Sakoor - Direct - Dayananda

2193

1 A That's the gun that the guy had in the backseat, and he
2 also had it in the lap -- in his lap, when I got free.

3 Q You say you started wrestling him; is that right?

4 A Yes.

5 Q At some point was it him by himself or someone else was
6 able to --

7 A No, first it was just me and him. And I took him in
8 every direction in the apartment, until I found the door.

9 Q Then what happened?

10 A I opened the door, and one of the neighbors was coming
11 up --

12 THE COURT: He already said that. He already said
13 that. What else you want to ask?

14 Q Tell us what happened after the police officers arrived.

15 A They cut me free, and they took me to the precinct.

16 Q And did you tell the police at that time what had
17 happened?

18 A Yes.

19 Q Did you tell the police that you were involved in selling
20 drugs, at that time?

21 A No.

22 Q Did you learn where you were being held that day, on
23 July 11th, 2002?

24 A Yeah. When they came out, yeah.

25 Q Where were you?

Sakoor - Direct - Dayananda

2194

1 A In Brooklyn.

2 Q And as part of talking with the police, did you view
3 photo arrays?

4 A Yes.

5 Q I'm going to show you what hasn't been entered yet. This
6 will be Government Exhibit 904. Do you view more than one
7 photo array, Mr. Sakoor?

8 A Yes.

9 Q I'm going to show you this. Do you see that on your
10 screen?

11 A Yes.

12 Q Do you recognize this?

13 A Not really.

14 Q Do you recognize your signature there?

15 A Yes, I recognize my signature.

16 Q Is this one of the photo arrays that you were shown on
17 July 21st of 2002?

18 A Yes.

19 THE COURT: Did you pick out anybody at these arrays
20 at all? Did you identify anybody?

21 THE WITNESS: Yes.

22 THE COURT: So who did you identify? Go ahead.

23 MS. DAYANANDA: Your Honor, the government moves to
24 admit Government Exhibit 904.

25 THE COURT: 904 in evidence.

Sakoor - Direct - Dayananda

2195

1 (Government's Exhibit 904 was received in
2 evidence.)

3 Q And just to -- now that the jury can see, can you tell us
4 who you identified in this photo array, which number?

5 A Number 6.

6 Q That's this gentleman; is that right?

7 A Yes.

8 Q Is that right, Mr. Sakoor?

9 A Yes.

10 THE COURT: You identify him as one of the people
11 whom you saw that night?

12 THE WITNESS: In the van, yes.

13 THE COURT: In the van, one of the people in the
14 van?

15 THE WITNESS: Yes.

16 Q And you mentioned that there was the van and another car
17 did. You see any females?

18 A There was a female voice in the other car, yeah. I never
19 got to see her.

20 Q Did you see Shawn after this incident at all?

21 A One time, at parole.

22 MS. DAYANANDA: I have nothing further. Thank you.

23 THE COURT: Any cross-examination, Mr. Barrett.

24 MS. BARRETT: Yes, your Honor. Just briefly,
25 your Honor, once the witness is done testifying, we would like

Sakoor - Direct - Dayananda

2196

1 to raise something about Exhibit 904, because I think there's
2 something based on testimony that needs to be redacted.

3 THE COURT: I'm sure counsel will agree something on
4 that will be redacted, I suspect. Go ahead.

5 MS. BARRETT: Thank you, your Honor.

6 THE COURT: Something redacted from the photo array?

7 MS. BARRETT: No, your Honor. There's writing on
8 the bottom of it.

9 THE COURT: Writing on the bottom of the photo away,
10 there's no problem with the government redacting that. It
11 will be redacted. Go ahead.

12 MS. BARRETT: Thank you, your Honor.

13 CROSS-EXAMINATION

14 BY MS. BARRETT:

15 Q Good morning, sir.

16 A How are you doing?

17 Q Okay. And you?

18 A I'm all right.

19 Q Good. You testified on direct examination that you
20 identified an individual in a particular photo array; is that
21 correct?

22 A Yes.

23 Q You identified more than one person in connection with
24 this case; is that right?

25 A Yes. I think so, yeah.

Sakoor - Cross - Barrett

2197

1 Q And do you remember the name Shawn Gill as being someone
2 that you actually identified in connection with this?

3 A Yeah, I think so.

4 Q And Charles Cummings, is that a name that sounds familiar
5 to you?

6 A Not really.

7 Q But there were multiple people that you identified; is
8 that right?

9 A Yes.

10 Q And you mentioned on direct examination as well that you
11 met Mr. Campbell at Orleans; is that right?

12 A Yes.

13 Q And you both were there serving time, right?

14 A Yes.

15 Q And you testified about what got you there. In the
16 assault case, was there also in connection with that a
17 firearm?

18 A No.

19 Q No? The weapon was a knife, is that --

20 A The weapon -- they charged the weapon as my car.

21 Q Okay. And did you say you also cut the person?

22 A Yeah, once somebody got cut.

23 Q Okay. Do you know what that weapon was there?

24 A It was a razor.

25 Q Okay. And while you were in prison, you testified that

Sakoor - Cross - Barrett

2198

1 on a couple of occasions you might have distributed marijuana,
2 weed; is that right?

3 A Yes.

4 Q How were you able to get that weed into prison?

5 A People sold it in there.

6 Q People sold it?

7 A People sold it.

8 Q Including you, right?

9 A Yeah, well, I sold joints. People sold the bags.

10 Q Okay. So you bought bags of marijuana from other
11 prisoners, and then sold joints, making a profit out of that;
12 is that right?

13 A Yes.

14 Q Okay. You did not bring -- introduce drugs from the
15 outside into prison, ever?

16 A No.

17 Q You had no source from the outside; is that right?

18 A No, no, no.

19 Q And if Mr. Campbell testified to that effect, he would
20 have been wrong?

21 MS. DAYANANDA: Objection.

22 THE COURT: Sustained. It's an improper question.
23 Next question.

24 Q Did you distribute narcotics in prison on a large scale?

25 A No.

Sakoor - Cross - Barrett

2199

1 Q You would not describe it as an everyday event for
2 yourself?

3 A No, the only time narcotics came into the prison was on
4 weekends.

5 Q Okay. What do you mean by that? Explain that to me.

6 A Because, I guess -- it comes through the visiting room,
7 so it would only come on the weekends. It's only visits on
8 the weekends. There would only be drugs on the compound on
9 weekends.

10 Q And when -- did Shawn Campbell act as muscle for you
11 while you were in prison together?

12 A No, no.

13 Q He never assaulted anyone on your behalf?

14 A No, no.

15 Q While you were in prison together?

16 A No, no.

17 Q And once you got on parole, you were still, obviously,
18 dealing drugs, and you testified to that on direct
19 examination?

20 A Yes.

21 Q All the way up until 2007, right?

22 A Yes.

23 Q At least?

24 A Yes.

25 Q Did you continue dealing drugs after your arrest in 2007?

Sakoor - Cross - Barrett

2200

1 A No.

2 Q Gave it up, then?

3 A Gave it up.

4 Q You also testified that you were dropped off -- by the
5 way, was the name of the bar Foreplay?

6 A Foreplay. It really was called Good Vibrations. Before
7 it was called Foreplay, it was originally Good Vibrations.

8 Q Okay. It's hard to forget that name, when you read it on
9 a document. So you were dropped off at the bar by your friend
10 who owed you money; is that right?

11 A Yes.

12 Q And this friend picked you up in a taxi and then dropped
13 you off at this place Foreplay?

14 A Yes.

15 Q Was -- the \$600 that was stolen from you, was that the
16 money that he owed you?

17 A Yes.

18 Q Okay. And what did he owe you money for?

19 A Some weed.

20 MS. BARRETT: Thank you very much, sir.

21 THE COURT: Any other questions?

22 MR. HERMAN: Judge, seek in limine instruction.

23 This incident is not charged against Mr. Granton.

24 THE COURT: The same type of instruction here, this
25 is not anything being charged, just offered, I take it, as

Sakoor - Redirect - Dayananda

2201

1 background information.

2 MS. DAYANANDA: This charge is not for Mr. Granton.

3 THE COURT: This doesn't apply to Mr. Granton.

4 MR. HERMAN: Thank you, Judge.

5 REDIRECT EXAMINATION

6 BY MS. DAYANANDA:

7 Q Mr. Sakoor, were you provided a subpoena to testify here
8 today?

9 A No.

10 Q Did you have any agreement with the government concerning
11 your testimony?

12 A No.

13 MS. BARRETT: There's nothing brought up on cross on
14 that.

15 THE COURT: Well, it's all right. Go ahead.
16 Anything else?

17 MS. DAYANANDA: That's it.

18 THE COURT: Okay. You can step down.

19 So I take it that that takes care of the morning's
20 witnesses, so we'll have an early break.

21 The food's going to be here about 12:30, Mike?

22 THE CLERK: Yes.

23 THE COURT: All right. So just relax, and let's
24 reconvene at 1:30, let's say. And at that time hopefully
25 Mr. Myers will be here.

Proceedings

2202

1 Juror Number 5, I want to talk to you about a
2 scheduling issue. Come on up here. Everybody else can leave.
3 And let's chat a little bit about your concern.

4 THE CLERK: All rise.

5 (Outside the presence of the jury.)

6 THE COURT: You stay behind. Number 5, right?

7 THE JUROR: Sixty.

8 THE COURT: Are you the one that has the scheduling
9 problem?

10 THE JUROR: I have something going on this week,
11 yes.

12 THE COURT: Just stay there. We're going to talk
13 about it. Try to help you out. Please be seated. This
14 gentleman has an interview scheduled this week for a job?

15 THE JUROR: Correct. Well, I met with them on
16 Monday and Friday of last week, so --

17 THE COURT: Don't be nervous. You can sit down.

18 THE JUROR: I'm trying to indicate that it's an
19 advanced stage, so it's a little bit more important.

20 THE COURT: When is it scheduled?

21 THE JUROR: They gave me three options. I told them
22 my times.

23 THE COURT: Maybe we can help you get the job.

24 THE JUROR: I'd appreciate that. They gave me
25 three -- knowing that I would have to ask you for whatever

Proceedings

2203

1 slot, they told me Tuesday -- they gave me, like, a middle of
2 the daytime, same thing on Thursday, and then on Wednesday
3 they said anything after about 11:30.

4 THE COURT: This coming Wednesday?

5 THE JUROR: Yes.

6 THE COURT: Here's what I'd like to do, with your
7 permission, give Mr. Innelli the name of the people you have
8 the interview. Unless you have any serious objection, I'm
9 going to call them and tell them you've been an outstanding
10 juror and they should hire you, and see if I can get you
11 scheduled for maybe next week sometime. I can talk to them
12 about it, and see what their concerns are, and try to help you
13 out.

14 THE JUROR: Yeah, I guess.

15 THE COURT: What kind of job is it?

16 THE JUROR: Real estate.

17 THE COURT: Real estate. Give the information to
18 Mr. Innelli. Give me the contact person, and I will call
19 personally and explain we need you here, you've been an
20 excellent juror, and they would be smart if they hired you.

21 THE JUROR: Thank you.

22 THE CLERK: All rise.

23 (Outside the presence of the juror.)

24 THE COURT: So do you think Mr. Myers will be here
25 by 1:30?

Proceedings

2204

1 MR. AMATRUDA: Yes, your Honor.

2 THE COURT: It's raining; do the best you can. See
3 you guys at 1:30.

4 MR. RUHNKE: Your Honor, could I speak to the Court
5 about a couple things?

6 THE COURT: Sure.

7 Everyone else can leave, if you want.

8 MR. RUHNKE: There are two things, your Honor. Your
9 clerk very efficiently entered a document this morning saying
10 we've withdrawn the motion to strike evidence. We've
11 withdrawn A and B. We had not withdrawn C in that letter
12 motion.

13 THE COURT: What was C?

14 MR. RUHNKE: C was to strike the testimony about the
15 drugs being thrown out the window because the officer had no
16 personal knowledge of it. In fact, I should strike the
17 invoices. The invoices -- the testimony was actually -- you
18 sustained the objection, but we moved to strike the invoices,
19 because there's no way the officer --

20 THE COURT: We sustained the objection, but the
21 invoice is in evidence; is that what happened?

22 MR. RUHNKE: Yes. I also understand the government
23 may try to cure this tomorrow.

24 MS. DAYANANDA: As I mentioned to Mr. Ruhnke this
25 morning, the officer who observed the items being thrown out

Proceedings

2205

1 of the window will be testifying tomorrow morning. I can
2 still redact the vouchers, if that's the issue, but the
3 testimony will be clear where the items will be.

4 THE COURT: The testimony will be forthcoming
5 tomorrow. See where we're at.

6 MR. RUHNKE: Fine, your Honor. One other matter, on
7 the direct of Mr. St. John, the retired New York Police
8 Department, over objection, your Honor permitted Ms. Paul to
9 elicit what Marcel Kennedy said to the officer. He said World
10 did it.

11 THE COURT: Yes, I know that.

12 MR. RUHNKE: And I can't think of any way the jury
13 is going to be able to limit that to an explanation as to why
14 he took certain action, and I move to strike that,
15 your Honor --

16 THE COURT: You made a record. Explain it to them,
17 I think, succinctly, and I think they understand that it's an
18 example of what they saw before. I'll talk to them again.

19 MR. RUHNKE: Thank you, your Honor.

20 THE COURT: I guess 1:30 we'll reconvene.

21 (Recess in proceedings.)

22 (Proceedings continued on the following page.)

23

24

25

1 A F T E R N O O N S E S S I O N

2 (The following takes place out of the presence of
3 the jury.)

4 THE COURT: Who is this distinguished gentleman
5 sitting here?

6 MS. PAUL: This is Detective DiCostanzo of the
7 ballistics lab.

8 THE COURT: He didn't look like Mr. Myers.
9 You are not Mr. Myers, are you?

10 THE JUROR: No.

11 THE COURT: Mr. Myers will follow this witness.

12 MR. AMATRUDA: We have a very quick witness and then
13 Mr. Myers. After him we have a very quick one who came in
14 from out of town.

15 THE COURT: That's all right, we are in good shape.

16 (Pause in the proceedings.)

17 (Defendants enter courtroom.)

18 (Jury enters courtroom.)

19 THE COURT: All right. Sit down, folks.

20 So, I spoke to Juror Number Five about scheduling,
21 nothing about the case. Mr. Innelli tells me a couple of
22 folks have some need to leave a little bit early, maybe 4:30
23 or 4:00. We'll work it out. I have to sort of fit the pieces
24 together but we'll probably work it out so we can leave a
25 little earlier tomorrow and I will know more specifics this

DiCostanzo - direct - Paul

2207

1 afternoon later on. We'll see what we can do, okay.

2 Let's have the next witness sworn now.

3 MS. PAUL: Your Honor, we are calling Detective
4 Gregory DiCostanzo.

5 THE CLERK: Number 31.

6 (Witness sworn by the clerk.)

7 G R E G O R Y D I C O S T A N Z O, having been first
8 duly sworn was examined and testified as follows:

9 THE CLERK: Please state and spell your name.

10 THE JUROR: Detective Gregory DiCostanzo, D I,
11 capital C O S T A N Z O.

12 MS. PAUL: This is number 31, Your Honor.

13 THE COURT: Your witness.

14 MS. PAUL: Thank you.

15 DIRECT EXAMINATION

16 BY MS. PAUL:

17 Q Good afternoon.

18 A Good afternoon.

19 Q Are you employed?

20 A I am.

21 Q Where do you work?

22 A I work with the New York City Police Department in the
23 Forensics Investigation Division in the Firearms Analysis
24 Section.

25 Q Can you just briefly tell us what you do in that section?

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1 A I test firearms and ammunition for operability and
2 identification as well as do microscopic examinations of
3 ballistic evidence.

4 MS. PAUL: All right, Your Honor, I'm going to be
5 seeking to qualify Detective DiCostanzo as an expert, so I can
6 go through the questions.

7 THE COURT: What is defense counsel's preference, do
8 you want to hear his qualifications or are you willing to
9 agree that he's qualified?

10 MR. RUHNKE: I've seen his resume, I'm willing to
11 agree.

12 THE COURT: What says you, Mr. Herman, Mr. Beecher?

13 MR. HERMAN: We will agree he's qualified.

14 THE COURT: If you want to give him a brief
15 opportunity to explain.

16 Q All right. Let's explain --

17 THE COURT: We don't have to go through it
18 extensively. He's not going to be questioned as far as his
19 qualifications to testify as an expert. Let him explain a
20 little bit of what he does.

21 Q Okay. How long have you been working as a firearms
22 examiner?

23 A Since April of 2004.

24 Q How long have you been a microscopist?

25 A Since March of 2008.

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1 Q Can you tell us what that is?

2 A The microscopy part?

3 Q Yes.

4 A I compare bullets, pieces of bullets to each other,
5 cartridge casings to cartridge casings to each other, unfired
6 cartridge casings to fired cartridge casings and test fired
7 bullets cartridges from known firearms to evidence.

8 Q All right. And you use a microscope --

9 A Yes.

10 Q -- to do that work?

11 A I use what's called a comparison microscope which is
12 basically two microscopes bridged together that allow me to
13 look at evidence side-by-side in various magnifications
14 through one set of eye pieces.

15 THE COURT: You can get to the heart of his
16 testimony now, go ahead.

17 Q All right. First, I want to talk a little bit about
18 just the basics of guns to educate the jury if they don't
19 know.

20 What is a revolver and what is a semi-automatic?

21 A The basic difference between a revolver and a
22 semi-automatic is how the ammunition is placed into the
23 firearm and how the spent ammunition or the cartridge casings
24 are ejected from the firearm. With the revolver it's loaded
25 by hand, you open the cylinder, you load each cylinder, you

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1 close it, you pull the trigger, the cylinder revolves, that's
2 why they call it a revolver, places one cartridge of
3 ammunition, line up the barrel, the trigger drops, the gun
4 fires, pull the trigger again, the cylinder revolves, the
5 hammer drops, the gun fires.

6 With a semi-automatic you put a magazine into it
7 which is your ammunition for your device, you pull the top
8 half of that firearm to the rear and as it goes forward on the
9 Spring tension it puts one cartridge of ammunition into the
10 firearm, you pull the trigger, it fires. The recoil from the
11 bullet traveling down the barrel of the firearm pushes that
12 slide or that top half of that firearm to the rear. As it
13 goes rearward, it extracts and ejects the cartridge casing.

14 So, basically with a revolver you have to manually
15 open it up, load it and when you are done you have to open it
16 up again and manually unload it. With a semi-automatic
17 firearm once you load it, it will extract and eject those
18 cartridge casings on its own.

19 Q All right. And what about a round of ammunition?

20 A A round of ammunition or a cartridge of ammunition
21 consists of a cartridge casings itself, at the base of that
22 cartridge casing you have the primer and within the cartridge
23 casing itself you have the propellant or the gun powder and
24 that's all topped off with the bullet or the projectile.

25 Q An what is caliber?

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1 A Caliber mostly means the bullet based diameter; for
2 instance, a .45 bullet is .45 of an inch, a .40 caliber bullet
3 is .4 of an inch and so on.

4 Q When you receive ballistics evidence into your lab, just
5 generally how do you receive it?

6 A When it is vouchered by whoever the vouchering officer
7 is, it is brought down to our evidence control room. There
8 it's logged in and given a case number and then once it is
9 logged into the room, then an examiner can sign it out.

10 Q And begin the tests that are performed in the lab?

11 A Yes.

12 Q All right. And you told us about what you can compare;
13 are you able to compare bullets found at a scene to casings,
14 for example?

15 A No.

16 Q Why not?

17 A There's no scientific way right now to compare a bullet
18 to a casing.

19 Q And if you have a gun, are you able to compare casings or
20 bullets to see whether or not it came from the gun that you
21 have in your hand?

22 A Yes.

23 Q What if you don't have a gun, are you able to tell us
24 what gun was certain casings or bullets fired from?

25 A Some cartridge casings and some bullets will have very

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1 unique characteristics that will narrow it down to one,
2 possibly two different firearms but outside of that, only we
3 can compare them to each other, that's it.

4 Q And that's in terms of types but the specific gun you
5 wouldn't be able to tell unless you had the gun, is that
6 right?

7 A Correct.

8 Q All right. I'm showing you what is in front of you as
9 Government Exhibit 7000 through 7009.

10 MS. PAUL: I'm showing them, Your Honor, to make
11 this go quicker to aid in his testimony, they have been
12 previously turned over to counsel and they are one page each.

13 THE COURT: You need all of these in evidence?

14 MS. PAUL: Yes, it is one page per crime scene.

15 THE COURT: One page per crime scene, all right,
16 7000 to 7009. Let's go.

17 (Government's Exhibits 7000-7009 so marked in
18 evidence.)

19 Q All right. In connection with this case, were you asked
20 to review ballistics evidence?

21 A I was.

22 Q And did the reports that we just talked about, did they
23 span between 1995 and 2003?

24 A Yes.

25 Q Did you originally test all of this evidence?

DiCostanzo - direct - Paul

2213

1 A I did not.

2 Q Okay. And in preparation for trial here today did you
3 then test all of the evidence?

4 A I did.

5 Q And you're going to testify about your conclusions?

6 A Yes.

7 Q All right. I want to start with Government Exhibit 7000.
8 Did you test ballistics related to a person named Marcel
9 Kennedy?

10 A I did.

11 Q What was the date of the incident?

12 A 9/8 of '95.

13 Q What did the lab receive?

14 A 12 9mm Luger cartridge casings and 37 9mm bullets.

15 Q Was there a voucher number associated with that evidence?

16 A Yes, G as in George --

17 THE COURT: Let's do this, all right, because the
18 government, as always, is very meticulous which is certainly
19 what it's entitled to do, the judge has a different function,
20 you can give us a conclusion; you drew certain conclusions
21 from looking at this information, right?

22 THE JUROR: Yes.

23 THE COURT: In respect to each of these situations,
24 tell the jurors what you concluded. If there's any need for
25 any follow-up questions because of cross-examination, we can

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1 get back to it, okay. So, let's get your opinion out and your
2 conclusions first. Go through each one of them.

3 Q Okay. Did you test the evidence in connection with this
4 case?

5 A I did.

6 Q And what were your results?

7 A That the cartridge casings were fired from one gun or the
8 same gun as well as the bullets were fired from the same gun.

9 Q And what type of gun was it?

10 A A 9mm Luger caliber firearm.

11 Q All right. I'm going to now ask you to look at
12 Government Exhibit 7001. Is that evidence in connection with
13 a homicide of Michael Colon?

14 A Yes.

15 THE COURT: You can do the same thing now, just give
16 your conclusions.

17 A Two bullets --

18 Q Can I ask you first what did the lab receive from this
19 crime?

20 A Two bullets.

21 Q And were they from the scene or the morgue?

22 A I don't know. I believe they were from the scene.

23 Q Okay. And you said they were two bullets, did you test
24 them?

25 A They were from the scene, yes, and I did test them, yes.

DiCostanzo - direct - Paul

2215

1 Q What were your results?

2 A That both bullets were fired from the same firearm.

3 Q Can you tell us what type of firearm?

4 A It most likely was a .38 or a .357 Magnum.

5 Q Why can't you tell the difference?

6 A The bullets are identical in size, they can both be fired
7 out of -- a .38 and .357 can be fired from the same firearm
8 but they're much heavier than 9mm-s.

9 Q All right. I'm going to ask you to look now at
10 Government Exhibit 7002.

11 THE COURT: All right, same questions, you can tell
12 us where they came from and you know what the drill is now.

13 Q Are those in connection with the homicide of Lamale
14 Lawson?

15 A Yes.

16 Q That occurred on October 28, 1999?

17 A Yes.

18 Q And what did the lab receive?

19 A We have three .40 caliber cartridge casings, two .380
20 caliber cartridge casings, four .40 caliber bullets, and two
21 pieces of unsuitable lead.

22 Q Did you test that evidence?

23 A I did.

24 Q What were your results?

25 A That the three .40 caliber cartridge casings were from

DiCostanzo - direct - Paul

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1 one gun, that the .380 calendar cartridge casings were from
2 the same gun, the three .40 caliber bullets -- excuse me, the
3 four .40 caliber bullets were fired from the same gun.

4 Q And in your comparison of those .40 caliber bullets, was
5 one of those recovered from the body and others from the
6 scene -- from the morgue, I'm sorry, and others from the
7 scene?

8 A Yes, a bullet and a piece of lead was recovered from the
9 morgue, everything else was from the scene.

10 Q All right. I'll ask you now to go to 7003. Are those in
11 connection with a shooting at 415 Lafayette on May 11, 2000?

12 A Yes.

13 Q What did the lab receive?

14 A Nine .40 caliber cartridge casings and a piece of copper
15 jacketing.

16 Q Did you test that evidence?

17 A I did.

18 Q What was your conclusion?

19 A That all nine cartridge casings were fired from the same
20 firearm.

21 Q And that's a .40 caliber?

22 A Yes.

23 Q All right. Let's move on to Government Exhibit 7004 and
24 7005. Are those --

25 MS. BARRETT: Excuse me, Ms. Paul, if it is more

DiCostanzo - direct - Paul

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1 than one page, could you let us know; are these one page
2 documents?

3 MS. PAUL: Yes, 7004 and 7005.

4 MS. BARRETT: Okay, because I have lots of extra
5 pages.

6 Q All right. So, are both of those exhibits related to the
7 homicide of Ivery Davis?

8 A Yes.

9 Q Okay. And there are two exhibits, is one of them from
10 the morgue and one from the scene?

11 A Yes.

12 Q What did the laboratory receive from the morgue and
13 scene?

14 A 7004 being the morgue evidence, you have five bullets,
15 three one caliber and two others of different calibers.

16 Q Starting with the ones of the same caliber?

17 A We have .40 caliber brass bullets, three of them, two of
18 them .40 class and one piece of a bullet and all three of
19 those matched each other. Then we have one .22 caliber bullet
20 and one 9mm size .38 caliber bullet.

21 Q Okay. Is there a marking that distinguishes them from
22 the Medical Examiner, the .40 caliber ones being what they
23 call new bullets and the 9mm and .22 being old?

24 A On the -- yes.

25 Q From the Medical Examiner?

DiCostanzo - direct - Paul

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1 A Yes, on the packaging.

2 Q Okay. That's the evidence that you received from the
3 morgue.

4 Let's talk about the scene.

5 A We have four .40 caliber cartridge casings that were
6 fired from the same gun, a piece of a bullet and another 9mm
7 bullet which could not be compared to each other because one
8 of them was unsuitable.

9 Q What does that mean just to be unsuitable?

10 A Unsuitable being there's not enough or no individual
11 markings that could be used for a comparison.

12 Q All right. So, you found .40 caliber casings on the
13 scene and .40 caliber bullets from the morgue, were you able
14 to compare those?

15 A No; the casings to the bullets, no.

16 Q For the reasons that you said earlier?

17 A Correct.

18 Q Okay. Did you do comparisons though between the .40
19 caliber casings and bullets that were recovered from the
20 scenes and the morgue at the Ivery Davis murder, the Lamale
21 Lawson murder and the car shooting on May 11, 2000?

22 A Yes.

23 Q What were your results?

24 A That the cartridge casings from all three scenes were
25 fired from the same gun, the bullets from all three scenes

DiCostanzo - direct - Paul

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1 were fired from the same gun.

2 Q All right. Let's move on to 7006. Is that the evidence
3 from a homicide at Quincy and Marcy on June 10, 2000?

4 A Yes.

5 Q What did the laboratory receive?

6 A One bullet and a firearm.

7 Q And within the firearm were there additional bullets?

8 A Yes, there was a magazine that was loaded with 15
9 cartridge casings -- cartridges, unfired cartridges.

10 Q What type of gun?

11 A It was a 9mm Ruger.

12 Q And you said there was a bullet, is that a discharged
13 bullet?

14 A Yes.

15 Q What type of bullet?

16 A It's a 9mm caliber class bullet but the weight on it is
17 more of a .380.

18 Q Did you test this evidence?

19 A I did.

20 Q And did you conclude anything?

21 A The bullet on its own was inconclusive to the firearm
22 submitted.

23 Q Okay. Government Exhibit 7007, is this related to James
24 Hamilton on August 2nd, 2000?

25 A Yes.

DiCostanzo - direct - Paul

2220

1 Q All right. What did the lab receive from this crime
2 scene?

3 A Five cartridge casings, four of which were able to be
4 matched; five unfired cartridges, and two pieces of bullet.

5 Q And can you tell whether they were from the scene or from
6 the morgue?

7 A They were from the scene.

8 Q And did you test this evidence?

9 A I did.

10 Q What were your results?

11 A Again, four of the five 9mm cartridge casings were
12 matched. One of them I couldn't match because the primer was
13 blown up.

14 Q And just what's the primer again?

15 A The primer is the spot on the bottom of the cartridge
16 where the firing connection strikes. If it strikes too hard
17 or the cartridge itself is more powerful than the others, it
18 blows a hole in the bottom of the firearm ruining anything we
19 could look at.

20 Q You said there were five unfired cartridges?

21 A Yes.

22 MS. PAUL: Can I approach for a moment?

23 (Pause.)

24 Q I've shown you 7007-A and B?

25 A Yes.

DiCostanzo - direct - Paul

2221

1 Q And what are those?

2 A Those are the two evidence envelopes in regards to this
3 case.

4 Q So, that's the evidence you tested from the James
5 Hamilton scene?

6 A Yes.

7 MS. PAUL: We're going to offer that, Your Honor.

8 THE COURT: 7000?

9 MS. PAUL: 7007-A and B.

10 THE COURT: So, we have 7007 and now you want A and
11 B, right?

12 MS. PAUL: Yes.

13 THE COURT: All right, in evidence.

14 (Government's Exhibits 7007-A and B so marked in
15 evidence.)

16 Q Okay. And you talked about unfired cartridge casings or
17 unfired cartridges, I'm sorry; what can you tell us about
18 finding unfired cartridges at a place where there has been a
19 shooting?

20 A Typically it means either the person wanted to show who
21 they were pointing a gun at that the gun was loaded so they'll
22 eject a round to show, look, it's loaded, or there was some
23 sort of malfunction where they had to continually work the
24 action of the firearm to get it to clear.

25 Q All right. You're making a motion with your hand. Can

DiCostanzo - direct - Paul

2222

1 you just describe how you would do that from a firearm?

2 A On the type of firearm that is consistent with the
3 evidence that I looked at you have a bolt on the top and you
4 have to keep pulling it to the rear in order to clear any
5 jammed or unfired cartridges out of the firearm and
6 also sometimes when you pull a magazine out, if it is jammed
7 up, the rounds can pop out of that as well.

8 Q I'm going to just show you -- this is from 70007-B; when
9 you say it is unfired, is this what we're looking at?

10 A Yes.

11 Q Are you able to tell us anything about comparing the
12 cartridge casings that were on the scene to the unfired
13 cartridges?

14 A There are what we call extractor and ejector marks which
15 are two separate pieces on a firearm, on a semi-automatic
16 firearm that help extract that cartridge casing and then the
17 ejector actually ejects it out of the firearm. Sometimes we
18 can compare extractor and ejector marks to each other but in
19 this case they were all in the same place but there wasn't
20 enough of those individual markings to say that that was the
21 same gun. There was enough there to say it was from the same
22 type of gun, if not that gun.

23 Q And do you have an opinion about what type of gun that
24 was?

25 A From the firing pin compressions I would say it's a

DiCostanzo - direct - Paul

2223

1 Cobray M11 or a copy of.

2 Q Okay. And what type of gun is that?

3 A It's an assault pistol, it is just a chunky gun that's
4 made to just put as many rounds out of it as possible.

5 Q And that kind of gun if it would jam, would it do it the
6 same way you've just describe?

7 A Yeah, there is a bolt on the top you would have to cycle
8 each time.

9 Q I'm just going to show another, just because we have it,
10 I'm going to show just another piece, an exhibit from this;
11 can you tell the jury what that is?

12 A That's a bullet core, a lead core. Each bullet has a
13 harder outer coating, copper, cupronickel or brass over a lead
14 core. The lead core is very soft. So, the semi-automatic
15 ammo usually doesn't haveunjacketed bullets so what happens
16 if we get a core and the core to us is not useful during an
17 examination because there's a jacketing on the outside that
18 picks up those unique and individual markings, whereas once
19 the core separates from, the core never touched the inside of
20 the firearm so there's no value to it at all.

21 Q All right. But this you can tell has been fired now?

22 A Yes.

23 Q As opposed to the other ones?

24 A Yes.

25 Q Okay. Let's move on to Government Exhibit 7008. Is this

DiCostanzo - direct - Paul

2224

1 evidence -- I'll let you get it.

2 Is this evidence from the murder of Troy Singleton?

3 A Yes.

4 Q What did the lab receive?

5 A We had seven .45 auto caliber cartridge casings.

6 Q I'm sorry to interrupt you for a moment. Is there
7 evidence from the scene and evidence from the morgue?

8 A There is.

9 Q Can you start with the scene?

10 A Sure. The scene is the seven .45 caliber cartridge
11 casings which were all fired from one gun. We also have
12 three and tow -- well, five total 9mm Luger cartridge casings
13 that were fired from one gun, and we have one deformed
14 aluminum jacket bullet from the scene. And then from the
15 morgue we received four pieces of aluminum jacketing, two 9mm
16 bullets, two more pieces of aluminum jacketing, fired lead
17 fragments, two more pieces of aluminum jacketing, one lead
18 core and another lead core. Those are all from the morgue.

19 Q Did you test this evidence?

20 A I did.

21 Q What were your results?

22 A The .45 is one gun.

23 Q I'm sorry to interrupt you. Those are from the scene?

24 A The scene.

25 Q Okay.

DiCostanzo - direct - Paul

2225

1 A The .45 caliber casings from the scene were from one gun,
2 the fired 9mm Luger cartridge casings were from one gun. Then
3 we have the aluminum jacketed bullet, two pieces of aluminum
4 jacketing. So, the one bullet from the scene and two pieces
5 of jacketing from the morgue were fired from one gun. We have
6 two 9mm bullets from the morgue fired from one gun, different
7 from the first one that fired the other three pieces, and the
8 rest of it was unsuitable for comparison.

9 Q Are you able to tell from your examination how many guns
10 were at this scene?

11 A At the scene there was two or better.

12 Q What do you mean "two or better"?

13 A At least two, there could have been other ones that
14 weren't recovered but we have evidence of two.

15 Q Okay. And, for example, you said that there were 9mm
16 cartridge casings that matched and then there were 9mm
17 bullets that matched but you can't compare those two things,
18 right?

19 A Correct.

20 Q Okay. Let's go to the final exhibit which is 7009. Is
21 this the evidence in connection with the murder of Tyrone Baum
22 on July 25, 2003?

23 A Yes.

24 Q Did your lab receive evidence from both the scene and the
25 morgue?

DiCostanzo - direct - Paul

2226

1 A I only have scene evidence here.

2 Q What did you receive?

3 A I received three 9mm Luger cartridge casings and one 9mm
4 class bullet.

5 Q All right. And can you tell us what your results were
6 from testing that evidence?

7 A The three cartridge casings from the scene were fired
8 from the same firearm.

9 Q And you said there was a bullet, are you able to give any
10 testimony about the bullet?

11 A Only that it was a 9mm caliber class bullet.

12 Q All right.

13 (Pause.)

14 MS. PAUL: If I may approach for one moment?

15 Q You spoke about from the scene of James Hamilton that you
16 believed there was a Cobray M-11?

17 A Yes.

18 Q Are you familiar with a Tec-9?

19 A Yes.

20 Q What is a Tec-9?

21 A A Tec-9 is also a hand-held machine pistol which can be
22 semi-automatic or fully automatic in nine millimeter.

23 Q All right. And in terms of the way that they appear,
24 could you describe if they're different or similar?

25 A They're similar in the fact that they're small, they have

DiCostanzo - cross - Ruhnke

2227

1 large magazines that stick out the base. The difference
2 between the two is that the Cobray M-11 has the magazine in
3 the handle, whereas the Tec-9 has it forward of the trigger.

4 MS. PAUL: I have no further questions.

5 THE COURT: Is there any cross-examination?

6 MR. RUHNKE: Quickly, Your Honor.

7 THE COURT: Go ahead, Mr. Ruhnke.

8 CROSS-EXAMINATION

9 BY MR. RUHNKE:

10 Q Good afternoon, Detective.

11 A Good afternoon.

12 Q You testified that there are times when you are able to
13 test fire a pistol or a weapon, a firearm, and compare it
14 against firearms evidence that are recovered at a crime scene
15 or from a body at the morgue, correct?

16 A Yes.

17 Q And what you can do is if you have say a lead cartridge
18 that has certain markings on it, you could then test fire a
19 weapon, compare the markings on that piece of lead to the land
20 and groove impressions they're called and determine whether or
21 not they seem to be from the same weapon, correct?

22 A Correct.

23 Q When it comes to shell casings, you can have a shell
24 casing, say a .40 caliber shell casing recovered from the
25 scene and then a .40 caliber pistol that's been -- or

DiCostanzo - cross - Ruhnke

2228

1 semi-automatic pistol that's been recovered from a person or a
2 location and then again test fire the recovered weapon,
3 correct?

4 A Yes.

5 Q And you can compare the shell casings, you look at firing
6 pin impressions, right?

7 A Yes.

8 Q You look at breech face impression, right?

9 A Yes.

10 Q When the bullet is fired, it gets pushed, the shell
11 casing is pushed back against the back of the gun and leaves a
12 mark that is unique to each weapon, right?

13 A Correct.

14 Q Okay. And sometimes you can compare extractor and
15 ejector marks, correct?

16 A Correct.

17 Q In this case, if I understand your testimony correctly,
18 you associated several types of ballistic evidence with two or
19 three different crime scenes, correct?

20 A Three I believe.

21 Q Three, okay. So, you are able to say within your field
22 of expertise that the same weapon was used three times, right,
23 at these three crime scenes?

24 A Correct.

25 Q Okay. But you were never given a weapon that had been

DiCostanzo - cross - Ruhnke

2229

1 seized from somebody or was associated with somebody in any
2 way so that you could then test fire a weapon and compare it
3 against the recovered ballistic, correct?

4 A Correct.

5 MR. RUHNKE: Okay. Thank you.

6 Nothing further.

7 THE COURT: Anything further, Ms. Paul?

8 MS. PAUL: No, Your Honor.

9 THE COURT: All right. Thank you. You may step
10 down.

11 THE JUROR: Thank you, Your Honor.

12 THE COURT: All right. Are we ready for Mr. Myers
13 now, Mr. Amatruda?

14 MR. AMATRUDA: I have one very quick witness, Judge,
15 then we'll have Mr. Myers. THE JUROR is Joseph Trawicki, he's
16 from Sprint.

17 (Witness takes the stand and is sworn by the clerk.)

18 THE CLERK: Please have a seat. Please state and
19 spell your name.

20 THE JUROR: Joseph Trawicki, J O S E P H, T
21 R A W I C K I.

22 THE CLERK: Thank you.

23 THE COURT: Your witness.

24 Go ahead.

25 MR. AMATRUDA: Thank you, Your Honor.

Trawicki - direct - Amatruda

2230

1 J O S E P H T R A W I C K I, having been first duly
2 sworn was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. AMATRUDA:

5 Q Mr. Trawicki, where do you work?

6 A Sprint.

7 Q And what do you do for Sprint?

8 A I am one of the records custodians.

9 Q And as a records custodian, do you regularly testify
10 about Sprint records?

11 A Yes, I do.

12 Q And so, you're familiar with what Sprint records look
13 like and what they reflect?

14 A Yes, sir.

15 Q Okay. I just want to show you for identification page 43
16 from Government Exhibit 8000 which is not in evidence yet.

17 THE COURT: Do you want that in evidence?

18 MR. AMATRUDA: I can offer it subject to connection,
19 Your Honor.

20 THE COURT: Any objections from defense counsel?

21 MR. RUHNKE: No, Your Honor.

22 THE COURT: So, let's have that in evidence.

23 (Government's Exhibit 8000, page 43, so marked in
24 evidence.)

25 THE COURT: These are records.

Trawicki - direct - Amatruda

2231

1 MR. AMATRUDA: Okay.

2 MR. RUHNKE: Subject to connection.

3 MR. AMATRUDA: Yes.

4 Q Looking at this, this is what's called a bill reprint,
5 correct?

6 A That is correct.

7 Q And the bill reprint generally speaking shows what?

8 A Minutes of usage on a cellular phone.

9 Q Okay. And so it will show, for instance, I'm pointing to
10 July 29th, 11:30 a.m., it will show that this particular
11 account had minutes of usage with the phone number that I'm
12 pointing to?

13 A That is correct.

14 Q Okay. And the telephone number that is associated with
15 this account is what?

16 A The telephone number (917) 406 -- I believe that's 5776.

17 Q Okay. And looking at another page of what I can just
18 offer subject to connection of Government Exhibit 8000 which
19 isn't in this version here --

20 THE COURT: Which page?

21 MR. AMATRUDA: Page 2 of 85.

22 (Government's Exhibit 8000, page 2, so marked in
23 evidence.)

24 Q It is from a different month from the same account,
25 correct?

Trawicki - direct - Amatruda

2232

1 A That is correct.

2 Q Okay. And one of the prior numbers associated with this
3 account was (917) 723-4900, correct?

4 A That is correct.

5 Q So, just going back to Government Exhibit 9000, you see
6 that on page 43 of that exhibit --

7 MR. HERMAN: Is it 8000?

8 MR. AMATRUDA: I'm sorry, 8000.

9 Q That telephone number (917) 723-4900 appears regularly;
10 is that correct?

11 A Yes, sir.

12 Q And then if you look later in the billing cycle, number
13 (917) 406-5776 appears regularly; is that correct?

14 A Yes, sir.

15 Q Okay. Just so the record is clear, a billing cycle is
16 generally a 30 day period; is that correct?

17 A Yes, sir.

18 Q Okay. And if somebody -- a Sprint customer were to
19 change their telephone number halfway into a billing cycle,
20 the number that's reflected at the top of the bill would be
21 what?

22 A The final number, the number that was actually in use at
23 the time the billing cycle ended.

24 Q Okay. So, the bill reprint would not show that at the
25 beginning of the month at the top the first number and then

Trawicki - cross - Barrett

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1 switch over, it will just show the second number the whole
2 time?

3 A That is correct.

4 MR. AMATRUDA: Okay. I have nothing further.

5 THE COURT: Anybody wish to examine?

6 MS. BARRETT: Yes, just a little curiosity.

7 THE COURT: Go ahead.

8 CROSS-EXAMINATION

9 BY MS. BARRETT:

10 Q I have trouble understanding my own phone bill, and this
11 one is not very familiar to me, so I'm just going to ask you a
12 couple of questions and I'm going to put it down here and hope
13 that I can do this.

14 Now, those numbers --

15 THE COURT: Are you referring to page 43?

16 MS. BARRETT: No, this is page two.

17 THE COURT: Page two, all right.

18 Q I don't know how to focus this thing but, anyway, those
19 numbers on the far left-hand side, those three telephone
20 numbers, can you tell me what those numbers are?

21 A Those are all what we call individual subscriptions on
22 one account. A subscription is a number on an account; for
23 example, my wife and I are both on my account, two different
24 subscriptions.

25 Q Right.

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1 A But it appears as one bill.

2 Q Okay. So, if you have kids at home, that is what that is
3 all about, their phone numbers would show up on that account
4 in that location?

5 A If you have it set up that way, yes.

6 THE COURT: You get the bill for all your kids,
7 right?

8 THE JUROR: Fortunately my kids are not old enough
9 for that yet.

10 Q Just you wait.

11 So, then I'm just going to turn over to the next
12 page and at the top -- I believe you were asked on direct
13 examination about that number at the top. Now, is that one of
14 the numbers that appears on the previous page as well?

15 A The 0242?

16 Q (646) 621-0242, yes?

17 A If you flip it back over, I can tell you the answer.

18 Q Okay. So, this is the first number there, right?

19 A Yes, ma'am.

20 Q Okay. I believe you were asked, if I go to page 43; at
21 the top of page 43 there's a (917) number, right?

22 A Yes, ma'am.

23 Q Is your testimony that at some point during this billing
24 period that number changed or what number changed?

25 A I believe it's the 49 -- this is a different billing

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1 period I believe than page two.

2 Q Okay. So, what's the relationship between the number
3 that appears on the top there -- if you touch this screen
4 what's going to happen is it will put up a green dot, so if
5 you want to put up a green dot there.

6 A So, if you look on the previous bill period, this number
7 showed up ending in 4900.

8 Q Okay. That number shows up. Now, those numbers in that
9 list, those are numbers that are called -- or that's the
10 number that's making the call?

11 A In the case of an inbound call you'll just see incoming.

12 Q Okay.

13 A In an outbound call this is the number dialed.

14 Q Okay.

15 A Under the old system, and this is from 12 years ago,
16 that's how you called your voicemail was by dialling your own
17 phone number.

18 Q Okay.

19 A So, you see that this handset is dialling its own
20 voicemail, 4900, but you see sometime during this billing
21 cycle, July 17th through August 16th, there was what we call a
22 MIN (ph) change or a number change, the actual telephone
23 number changed to a number ending in 5776 and if you go down
24 the list, you'll see calls, voicemail calls starting to go to
25 the 5776 number.

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1 Q Okay. At that point that's when you would be able to
2 tell the number that was being used?

3 A The number had changed from the number ending in 4900 to
4 the number 5776 I believe sometime around July 29th.

5 MS. BARRETT: Okay. Thank you for the
6 clarification.

7 THE COURT: Anything further by anybody?

8 MR. AMATRUDA: No, thank you, Judge.

9 THE COURT: Okay. You may step down. Thank you
10 very much.

11 THE JUROR: Thank you, sir.

12 (Witness steps down.)

13 THE COURT: All right.

14 Mr. Amatruda, are we ready for Mr. Myers?

15 MS. DAYANANDA: There's one short witness, Your
16 Honor.

17 THE COURT: Another short witness.

18 MS. DAYANANDA: If we could have two minutes?

19 THE COURT: It sounds the way things are going that
20 Mr. Myers might be your last witness, right?

21 MS. DAYANANDA: Possibly.

22 The government calls Dextlene Maxwell.

23 (Witness takes the stand and is sworn by the clerk.)

24 D E X L E N E M A X W E L L, having been first duly
25 sworn was examined and testified as follows:

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1 THE CLERK: Please have a seat. I ask you to please
2 state and spell your name.

3 THE JUROR: Dextene Maxwell, D E X L E N E, M
4 A X W E L L.

5 THE COURT: Your witness.

6 MS. DAYANANDA: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MS. DAYANANDA:

9 Q Good afternoon, Ms. Maxwell.

10 A Good afternoon.

11 Q Can you tell the jury where you grew up?

12 A Brooklyn, New York.

13 Q Did you work at a Sprint store at some point?

14 A Yes.

15 Q What years did you work at a Sprint store?

16 A 1999 to 2007.

17 Q And did you meet someone by the name of Kenny while --

18 A Yes.

19 Q Did you begin to date that person?

20 A Yes.

21 Q And what year was that?

22 A I don't recall the year.

23 Q At some point did he ask you to activate a telephone for
24 him?

25 A Yes.

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1 Q And did you do so?

2 A Yes.

3 Q And did you put that in your name or somebody else's?

4 A Someone else's name.

5 Q Do you remember the name of that person?

6 A Latoya Sang.

7 Q I'm going to show you what's entered into evidence as
8 Government Exhibit 13. Do you know that person?

9 A Yes.

10 Q Who is that?

11 A Kenny.

12 Q And you said you opened a number in Latoya Sang's name,
13 is that right?

14 A Correct.

15 Q Do you remember what that number was?

16 A No.

17 Q I'm going to show you -- did you at some point know what
18 that number was back in 2008?

19 A I'm sure then, yeah.

20 Q Okay. I'm going to show you something that perhaps will
21 refresh your recollection concerning that number. Do you want
22 to take a look at your screen, Ms. Maxwell.

23 THE CLERK: Just for THE JUROR, correct?

24 MS. DAYANANDA: Yes.

25 THE COURT: It is a long time now, we'll give you

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1 the opportunity to tell us the answer to that question.

2 THE JUROR: Repeat that please.

3 THE COURT: The question is the number --

4 THE JUROR: If I know the number?

5 THE COURT: Yes.

6 THE JUROR: I don't recall.

7 THE COURT: Look at this. Now, does that help you?

8 Not really?

9 THE JUROR: No, not really.

10 THE COURT: Okay. Next question.

11 Q Did you meet any of Kenny's friends?

12 A Yes.

13 Q And do you remember any of the names of them?

14 A No, not really.

15 Q Do you know a person by the name of World?

16 A Yes.

17 MS. BARRETT: Objection, Your Honor.

18 THE COURT: Sustained. Disregard it. That's a

19 leading question.

20 Q Did you open any other phones for Kenny?

21 A Yes.

22 Q For who?

23 A Under Aldene Maxwell.

24 Q Sorry?

25 A Under Aldene Maxwell for Kenny.

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1 Q And Aldene Maxwell --

2 A Correct.

3 Q -- who is that?

4 A My grandfather.

5 Q And why did you do it in your grandfather's name?

6 A Because I guess I just didn't do it in my name because I
7 worked for the company, I didn't have a phone in my name.

8 Q Okay. I'm going to show you -- and that was Aldene
9 Maxwell, is that right?

10 A Yes.

11 Q I'm going to show you what's been marked as Government
12 Exhibit 201.

13 MS. DAYANANDA: It is subject to connection, Your
14 Honor, that I'm going to show this.

15 THE COURT: 201?

16 MS. DAYANANDA: Yes.

17 THE COURT: It this photos?

18 MS. DAYANANDA: It is 8000, I'm sorry.

19 No, it is a record, Your Honor.

20 THE COURT: Tell me the number again.

21 MS. DAYANANDA: 8000.

22 THE CLERK: It's already in evidence.

23 THE COURT: So 8000 --

24 MS. BARRETT: Subject to connection.

25 THE COURT: We have page 43 and then page 2 in

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1 evidence.

2 MS. DAYANANDA: Okay.

3 Q Ms. Maxwell, do you see the record here?

4 A Correct.

5 Q This is the -- for the record, it's for Latoya Sang?

6 A Yes.

7 Q Okay. I'm just going to have you --

8 A Is that her number you're asking?

9 Q Is this the record associated --

10 MS. BARRETT: Objection, Your Honor.

11 THE COURT: I'm not so clear exactly what's
12 happening. We have part of 8000 is in evidence, pages 43 and
13 some reference to page 2. Is this something else you're
14 showing her now?

15 MS. DAYANANDA: Yes, Your Honor.

16 THE COURT: What exactly are you showing her here?

17 MS. DAYANANDA: This is the record that's already
18 been admitted subject to connection.

19 THE COURT: This is page 43 or page 2 or what?

20 MS. DAYANANDA: I believe it's page 43.

21 MS. BARRETT: This is not Latoya Sang.

22 THE COURT: Just one second. Let's just try to back
23 up and get this down clear, all right.

24 We have page 43 of the Exhibit 8000, that's the
25 telephone records, that's in evidence. Are you showing the

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1 same document or something else?

2 MS. DAYANANDA: It's the same document, Your Honor,
3 but the document is 4,000 pages, so this is one page of that
4 exhibit.

5 MS. BARRETT: We don't --

6 THE COURT: Excuse me. What page of which, Exhibit
7 8000?

8 MS. DAYANANDA: Correct.

9 THE COURT: That's not in evidence yet.

10 MS. DAYANANDA: It is in evidence subject to
11 connection but it has been shown to the prior witness.

12 THE COURT: This is not page 43, it is not page 2,
13 it is something else, right?

14 MS. DAYANANDA: Yes.

15 THE COURT: Page one now, is that what you're
16 saying, just so we're clear?

17 MS. DAYANANDA: We can call it 8000-A if you'd like.

18 THE COURT: What is 8000-A?

19 MS. DAYANANDA: What's being shown to THE JUROR
20 right now. It is an excerpt of Government Exhibit 8000.

21 THE COURT: It's part of phone records, right?

22 MS. DAYANANDA: Correct.

23 THE COURT: That's what's being shown to her?

24 MS. DAYANANDA: Yes.

25 THE COURT: So, what's the question you want to ask

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1 of her?

2 MS. DAYANANDA: If these are the records of Latoya
3 Sang, I believe she answered that already.

4 THE COURT: You can identify this as her records?

5 THE JUROR: I identified it as the name that that
6 account was in.

7 THE COURT: That's the name on the account?

8 THE JUROR: Yes.

9 THE COURT: What is your next question?

10 Q I'm showing THE JUROR Government Exhibit 8000-A that
11 we'll call it.

12 Now, Ms. Maxwell, are these continued records from
13 Latoya Sang?

14 MS. BARRETT: Your Honor, I object. She said she
15 recognized the name and that's it, not the records.

16 THE COURT: She recognizes the name but you want the
17 records actually in evidence; is she the foundation witness
18 that you need to have for that to happen? I'm a little
19 confused.

20 MS. DAYANANDA: It is fine, Your Honor, we'll leave
21 it as she recognized the name.

22 THE COURT: That's all. If you want the documents
23 in evidence, if there's going to be an objection to it, I
24 guess you have to lay some sort of foundation but I suspect
25 they are the records of the company but, anyway, suffice it

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1 for present purposes she recognizes the name on this document.
2 The document right now is not in evidence I guess subject to
3 connection, right?

4 MS. DAYANANDA: Correct, I believe so.

5 THE COURT: Go ahead, next question.

6 Q When you activated that phone, Ms. Maxwell, for Kenny,
7 did you give it to him?

8 A Yes.

9 Q And was there more than one phone that you activated for
10 him? You mentioned one in the name of Latoya Sang, correct?

11 A Uh-huh.

12 Q And one in the name of your grandfather, is that right?

13 A Right.

14 Q And at any point did he ask you to change the phone
15 number for that phone?

16 A I believe so.

17 Q And who paid the bills of that phone?

18 A I think I did.

19 Q And who gave you money for that?

20 A Sometimes I think I paid it most myself.

21 Q At some point were you interviewed by the New York Police
22 Department concerning opening the cell phone accounts?

23 A Yes.

24 Q And as part of that did you view a photo array?

25 A Yes.

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1 Q I'm going to show you what's been marked for
2 identification as Government Exhibit 135.

3 MS. BARRETT: Your Honor, I'm going to object to
4 this.

5 THE COURT: I don't know what the basis is, she's
6 just showing her an exhibit right now.

7 MS. BARRETT: Your Honor, I believe that she said
8 that she didn't remember any other individual other than
9 Kenny.

10 THE COURT: That's not the basis of an objection.
11 She's showing her a photo array now.

12 What's the question?

13 She's just looking at a photo array which what
14 exhibit is it?

15 MS. DAYANANDA: 135, Your Honor.

16 THE COURT: You're looking at 135. What's the
17 question?

18 MS. DAYANANDA: She can view it?

19 THE COURT: You can look at it. It is not in
20 evidence.

21 Q Okay. Do you recognize who's in this photo array? Do
22 you see your signature there?

23 A Yes, I do see my signature.

24 Q Okay. Did you recognize who it was at the time?

25 A I guess, yeah.

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1 THE COURT: The question is -- let me back up. Were
2 you shown this photo array at some point, yes or no, if you
3 recall?

4 THE JUROR: Yes.

5 THE COURT: Were you asked to see whether you could
6 identify somebody in that array?

7 THE JUROR: Honestly I don't recall but my signature
8 is there so obviously I did.

9 THE COURT: Your signature is there. I'm asking you
10 whether you recall whether somebody asked you to identify
11 somebody from that array, yes or no? If you don't recall, you
12 don't recall.

13 THE JUROR: I don't recall.

14 THE COURT: Next question.

15 Q Ms. Maxwell, directing your attention to September 22nd
16 of 2006, did you view a photo array that you're looking at
17 right now?

18 MS. BARRETT: Objection, Your Honor, asked and
19 answered.

20 THE COURT: Just --

21 A Yes.

22 THE COURT: -- one second. Overruled.

23 Let's see if we can clarify this. The question is
24 it's been a long time ago, so you're looking at something now,
25 do you see anything on that document which would jog your

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1 recollection that you actually saw a photo array, yes or no?

2 THE JUROR: Yes, my signature.

3 THE COURT: So, does that make you recall that you
4 saw that?

5 THE JUROR: That I looked at it and I signed it.

6 THE COURT: Okay, that's the answer.

7 What is your next question?

8 Q You recognize that photo as World, correct?

9 MS. BARRETT: Your Honor, I object to the leading
10 nature of the question.

11 THE COURT: It is a leading question.

12 Q Who is the person you identified?

13 THE COURT: Just one second, just stop. Stop, stop.

14 Members of the jury, there comes a time when we have
15 to say you can't have a leading question asked on direct
16 examination. There are some exceptions to that but this is
17 not one of those exceptions so disregard that. I mean she has
18 to be asked whether or not you had a photo array, you were
19 asked to identify someone and based upon that did you identify
20 somebody, yes or no. I think that is question. Can you
21 answer that or not?

22 THE JUROR: Yes, I did.

23 THE COURT: And who did you identify?

24 THE JUROR: I identified the person World.

25 THE COURT: Which one?

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1 THE JUROR: The person World.

2 THE COURT: What number was that on the photo array?

3 THE JUROR: The third one.

4 THE COURT: You identified that person as someone
5 you knew?

6 THE JUROR: Yeah.

7 THE COURT: That's her answer.

8 MS. DAYANANDA: She said, Judge --

9 THE COURT: What? Do you want that in evidence now?
10 (Pause.)

11 MS. DAYANANDA: One second, Your Honor.

12 THE COURT: While counsel is thinking about this,
13 see, the idea of not allowing leading questions is basically
14 because you don't want to put words into a witness' mouth, you
15 see, so that's not a proper question. Sometimes we allow it
16 but this is not an occasion when we ought to allow that. So,
17 you know, you heard, it all happened in the real world, you
18 saw how it all came out and the important thing is that a
19 leading question is not permitted. Then I asked her some
20 follow-up questions just for clarification purposes, you saw
21 how that process unfolded.

22 Q Okay. I'm showing you --

23 MS. DAYANANDA: This has been admitted subject to
24 connection.

25 THE COURT: I want to know whether or not you're

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1 offering 135 into evidence or not.

2 MS. DAYANANDA: I wanted to, yes. She identified
3 it.

4 THE COURT: I'll allow that in evidence.

5 MS. DAYANANDA: Thank you, Your Honor.

6 MS. BARRETT: Your Honor, I object.

7 THE COURT: Your objection is noted.

8 (Government's Exhibit 135 so marked in evidence.)

9 THE COURT: 135 is a photo array. You said that was
10 a photo array, that's your signature and you identified it
11 when you were asked -- you identified that person in that
12 photo array, right?

13 THE JUROR: Yes.

14 THE COURT: For that purpose I'm allowing it in
15 evidence. Your objection is noted.

16 MS. DAYANANDA: Your Honor, this is going to be part
17 of the 8000 series, I'm going to call this 8000-B as in boy, C
18 as in cat and D as in dog. These are already in evidence.

19 MS. BARRETT: Page numbers?

20 THE COURT: Just one second. Now we're getting back
21 to the records now of the phone company?

22 MS. DAYANANDA: Yes, Your Honor.

23 THE COURT: All right. So, we have part of 8000 in
24 evidence and these are which further parts of 8000 now that
25 you wish to offer?

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1 MS. DAYANANDA: B, C and D.

2 MS. BARRETT: Your Honor, we don't have those.

3 MS. DAYANANDA: You do.

4 THE COURT: Just one second. What do you want to
5 offer into evidence, pages of the phone record?

6 MS. DAYANANDA: Yes, Your Honor.

7 THE COURT: Which page numbers? I think we have
8 8000, I think we're on the right page hopefully. You
9 mentioned 43 and page 2 are in evidence. What numbers are
10 these?

11 MS. DAYANANDA: Your Honor, this is the subscriber
12 information. It does not have --

13 THE COURT: This is subscriber information?

14 MS. DAYANANDA: Correct.

15 THE COURT: Do you have somebody who can identify
16 these records here, is there any issue about that?

17 MS. DAYANANDA: I think they're already -- they
18 stipulated to these records, Your Honor.

19 THE COURT: We have a stipulation that these records
20 are official records?

21 MR. RUHNKE: There's a stipulation in progress, Your
22 Honor.

23 THE COURT: So, members of the jury, it's okay,
24 these things happen during the course of a trial, we'll square
25 it all away. Many times when you have records from phone

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1 companies, lawyers enter into stipulations that these are
2 legitimate records so you don't have to call somebody from the
3 phone company to identify them and apparently we have a little
4 glitch here because they haven't worked out a stipulation yet.

5 Do you need a little bit of time to do that?

6 MS. DAYANANDA: Your Honor, I'm sorry, what do
7 you --

8 THE COURT: Do you need a little bit of time to work
9 out your stipulation that these are official records? Are we
10 fussing over nothing here?

11 MS. DAYANANDA: No.

12 THE COURT: What is the nature of your objection,
13 Ms. Barrett?

14 MR. RUHNKE: I think the confusion is I have a
15 document called Government Exhibit 8000 in my hand but these
16 records apparently aren't in the same Government Exhibit 8000
17 I'm holding, that's the confusion.

18 THE COURT: Apparently Government Exhibit 8000 is
19 not this but consists of 4,000 pages, that's the confusion.

20 Would you like to put Mr. Myers on THE JUROR stand
21 and you can recall this witness tomorrow?

22 MS. DAYANANDA: No, Your Honor, we're going to wrap
23 it up in the next two minutes.

24 THE COURT: Now there's an objection here for some
25 reason. What is the nature of the objection?

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1 MS. BARRETT: The nature of the objection, Your
2 Honor, is that we have nothing in front of us, we're talking
3 about thousands and thousands of pages of telephone records.

4 THE COURT: So you really don't know what pages.

5 MS. BARRETT: I don't know what is being offered
6 here or what is being discussed. If we had the excerpts that
7 THE JUROR was going to be questioned about, that would be
8 fine.

9 THE COURT: Objection sustained.

10 Next question.

11 MS. DAYANANDA: Your Honor, I'm showing Ms. Barrett
12 three pages.

13 THE COURT: Just one second. You've done fine up to
14 this point but no one is perfect. We're wasting a lot of time
15 here.

16 MS. DAYANANDA: I'm showing Ms. Barrett.

17 THE COURT: You didn't do it before.

18 MS. DAYANANDA: She had them.

19 THE COURT: You gave them 8,000 pieces of paper.

20 MS. DAYANANDA: They're in the 3500 for this
21 witness.

22 THE COURT: You gave them 8,000 pieces of paper.
23 That doesn't sound like the government is treating them
24 fairly. You want to be fair to everybody, don't we.

25 MR. AMATRUDA: Your Honor --

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1 THE COURT: Do you need an adjournment?

2 MR. AMATRUDA: Can I just clarify, Judge?

3 THE COURT: Not in front of the jury.

4 MR. AMATRUDA: Okay.

5 THE COURT: This is unfortunate.

6 MR. AMATRUDA: You've said we are unfair. This
7 witness --

8 THE COURT: I'm telling you that unfortunately you
9 gave lots of pieces of paper and Ms. Barrett is having a hard
10 time finding exactly what you're talking about.

11 MR. AMATRUDA: I'm offering to --

12 THE COURT: Stop it.

13 MR. AMATRUDA: -- to point it out.

14 THE COURT: Members of the jury, retire to the jury
15 room for a few minutes, we'll take care of this.

16 THE CLERK: All rise.

17 (Jury leaves courtroom.)

18 THE COURT: All right. The jury is not here. Sit
19 down. We've done fine so far.

20 Now, Ms. Barrett, you make a record as to why you
21 think the government is not treating you fairly. I've told
22 the jury that I don't think the government is fair based on
23 your representation. If I have to tell them something else,
24 I'll do that. You tell me what your problem is.

25 MS. BARRETT: Your Honor, my problem is that I don't

1 have the documents with which THE JUROR is being questioned
2 specifically. We have been told and we have allegedly
3 thousands and thousands of pages --

4 THE COURT: Thousands of pages, you've got all this
5 material.

6 MS. BARRETT: And when we were handed 8000 earlier,
7 we were handed 8000 with the pages identified that THE JUROR
8 was going to be talking about. It's my understanding, I
9 haven't had a chance because we're on the fly here, to compare
10 to see if this is actually in the paperwork that I was handed
11 a half an hour ago but I'm told that it is not.

12 So, my simple point here is, one, it is not in the
13 3500 material for this witness and, two, if a witness is going
14 to be asked about particular documents, particularly dense
15 documents like telephone records, it seems to me that we need
16 an advance opportunity to look at it. I feel very
17 uncomfortable about dealing with a person and making
18 objections and doing all this kind of stuff and I don't want
19 to slow things down here, Judge.

20 THE COURT: I'm not being critical here. I have the
21 jury outside to deal with this. It sounded to me that we had
22 to talk this thing through and, Mr. Amatruda, apparently there
23 has not been effective communication, unless Ms. Barrett is
24 lying to me, between your office and defense counsel and it is
25 creating this problem.

Proceedings

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1 MR. AMATRUDA: Can we just have THE JUROR leave for
2 a minute, Judge, because I'm going to talk about something
3 specifically related to her?

4 THE COURT: All right. You can step down.

5 (Witness steps down.)

6 THE COURT: Let her wait outside.

7 MR. AMATRUDA: I'm sorry to do this, Judge.

8 (Pause.)

9 MR. AMATRUDA: Judge, this witness has testified to
10 the exact same information at two prior federal trials for
11 which her testimony was turned over. The records to which
12 defense counsel is referring are not being -- we're just
13 trying to show it to refresh her recollection. They were
14 provided as government's exhibits a long time ago and, in
15 addition to all that, I sent an e-mail to counsel this morning
16 specifically explaining this witness' testimony and explaining
17 that what we wanted her to testify to was that defendant
18 Damion Hardy through her changed his phone number from the
19 number ending in 4900 to the number ending in 5776. Really it
20 doesn't seem that complicated.

21 THE COURT: But Ms. Barrett is having a difficult
22 time and she explained to you why. Now, let's just back up,
23 we're not children here, all right. We have a point here in
24 the trial where this is obviously important testimony because
25 the government obviously wants to link Mr. Hardy to all of

1 this, I understand that. All I'm trying to do is to make sure
2 that defense counsel is properly on board.

3 If she said she doesn't have these papers, I just
4 want to make sure that she has the papers you're referring to.
5 That's all I'm trying to accomplish.

6 Ms. Barrett, what do you say now?

7 MS. BARRETT: Your Honor, we have thousands and
8 thousands of pages.

9 THE COURT: You said that before.

10 MS. BARRETT: All I'm concerned about is having the
11 documents that are being shown to THE JUROR.

12 THE COURT: Do you have them now?

13 MS. BARRETT: There's only one copy and these belong
14 to the government. But I want to clarify something here.

15 THE COURT: Do you have the papers now?

16 MS. BARRETT: I do.

17 THE COURT: Stop it. I just want to make sure you
18 have the papers.

19 MS. BARRETT: I have the government's copy which I'm
20 now looking at.

21 THE COURT: Very good. Now, what else?

22 MS. BARRETT: I want to point out, Your Honor, that
23 the difference here is that this witness when she testified in
24 the past remembered the numbers. These documents are being
25 used now to refresh her recollection about these numbers, the

1 testimony is not identical.

2 THE COURT: You can cross-examine her all you want.
3 I just want to do one simple thing, please listen to me. I'm
4 trying to run an orderly trial and have a clear record. I
5 want to make sure you have ample opportunity to see what the
6 document is that the government is referring to. If you have
7 any problems with authenticity, that's a different issue. I
8 want to make sure that of the thousands of pages which you
9 claim you were given, you now know exactly which pages the
10 government is questioning this witness about. Give me the
11 answer to that question.

12 MS. BARRETT: I have the pages in front of me and
13 I'm attempting to look at them.

14 THE COURT: Okay. Do you need some time to review
15 it?

16 MS. BARRETT: Five minutes would be fine.

17 THE COURT: All right. And then at that point this
18 document will be allowed in evidence since you're not
19 questioning the authenticity of it I take it.

20 MS. BARRETT: I'm not questioning the authenticity.

21 THE COURT: All right. So, the document will be in
22 evidence and then you can question her about it, you can
23 cross-examine her. We're clear now about what will be in
24 evidence, okay. So, take five minutes or so --

25 MS. BARRETT: Yes, Your Honor.

1 THE COURT: -- to review the documents now and then
2 we'll reconvene.

3 MS. BARRETT: Thank you.

4 MR. AMATRUDA: Judge, I would just make a motion
5 then that you instruct the jury that the defense has not been
6 treated unfairly. I think that was extremely prejudicial. It
7 was also unfair given that --

8 THE COURT: I'll tell the jury a few things, okay.

9 MR. AMATRUDA: All right.

10 THE COURT: But you know, to some extent it could be
11 argued that what Ms. Barrett said is not off the wall just
12 now, I mean she's been given thousands of papers and she is
13 confused about what exactly you are talking about now.

14 MR. AMATRUDA: Your Honor, THE JUROR' testimony
15 previously was exactly the same.

16 THE COURT: It just doesn't matter, Ms. Barrett is
17 not clear about that. I wanted to make sure she has the
18 documents that you're referring to.

19 What are the exhibit numbers going to be, 8000-A?

20 MS. BARRETT: Looks like it's B, C and D.

21 THE COURT: Just tell me what they are.

22 MS. DAYANANDA: She has my exhibits.

23 THE COURT: Just give me a number for my records.

24 MS. BARRETT: 8000-B, 8000-C and 8000-D.

25 THE COURT: B, C and D of 8000. These are excerpts

1 from the telephone company records. The authenticity is not
2 challenged. They will be allowed in evidence and we'll take
3 it from there.

4 (Government's Exhibits 8000-B, 8000-C and 8000-D so
5 marked in evidence.)

6 THE COURT: Take a look at that now and familiarize
7 yourself with this. You said you need this time to do that.

8 We'll be back in five minutes and we'll proceed.

9 MS. BARRETT: Thank you, Your Honor.

10 (Recess taken.)

11 (Continued on next page.)

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Proceedings

2260

1 (Outside the presence of the jury.).

2 THE CLERK: Ms. Barrett, are you prepared to proceed
3 now?

4 MS. BARRETT: Yes, sir.

5 THE COURT: You can call the jurors back in, and
6 I'll talk to them a little bit before. Let's bring THE JUROR
7 back in.

8 (In the presence of the jury.)

9 THE CLERK: You can all be seated.

10 THE COURT: Members of the jury, let me tell you a
11 few things. First of all -- I'll just shut this off. That's
12 number one. So the case is one which involves lots of papers,
13 and you've seen that already, and now we have lots of
14 telephone records. The government has responsibility under
15 the law to lay bear its evidence in the case. It's a very
16 significant, substantial responsibility. So all of the
17 material that's turned over before trial starts we call 3500
18 material. All right. So you've heard references to that from
19 time to time.

20 And the government has discharged its obligations
21 admirably throughout this entire trial, no question about it.
22 Sometimes there's such a thing as too much of a good thing is
23 a bad thing, and you have thousands of pieces of paper, and
24 I'm talking about telephone records in particular, and
25 sometimes defense counsel has a hard time following exactly

Proceedings

2261

1 the bouncing ball. I think that was this type of situation
2 here. The government acted absolutely correctly and is acting
3 in good faith. But, apparently, I didn't realize -- I
4 realized we have to stop and make sure we get a clearer
5 record. That's my responsibility -- that there was some
6 possible confusion as to which papers we're talking about, so
7 we stopped the action to give Ms. Barrett the opportunity to
8 look exactly at the pieces of paper that the government wants
9 to have in evidence here, so we did that. So I'm perfectly
10 satisfied that the government has acted in good faith.
11 There's no question about it.

12 It's just one of these types of human things that
13 come up from time to time when dealing with a case with lots
14 of papers. It's good we took a few minutes to take sure we
15 had a clear record here, which is very important. And I think
16 we're ready to proceed, at this time. So everyone has agreed
17 that Government's Exhibit 8000B, C, and D, which are,
18 apparently, three pages of multiple telephone records, will
19 now be in evidence.

20 (Government Exhibits 8000B, C and D were received in
21 evidence.)

22 THE COURT: The only thing I want to mention to you
23 is that we're going to adjourn tomorrow at 3:00, and timing
24 wise, we're doing just fine, and we have a couple of jurors
25 who expressed a need to leave a little earlier, and I'm happy

Maxwell - Direct - Dayananda

2262

1 to tell Juror Number 5 that we're told that your appointment
2 tomorrow is at 4:00 o'clock, and they also expressed interest
3 in talking to the judge, and taking him up on his offer to
4 provide recommendations. So they may be calling me to follow
5 up, so I hope you're going to get your job. I just want you
6 to feel at ease and not anxious about it. The way things are
7 breaking, I think we can convene tomorrow at 3:00 o'clock,
8 probably, and then pick up the next day with summations,
9 perhaps, and then we'll be able to go through without anybody
10 being under stress or pressure.

11 With that, Ms. Dayananda, let's continue with your
12 questions.

13 MS. DAYANANDA: Thank you, your Honor.

14 Q Before the short break, Ms. Maxwell, I just wanted to get
15 a couple things straight. You met a person by the name of
16 Kenny while you were working at the Sprint store, right?

17 A Yes.

18 Q At his request, did you open up a phone number?

19 A Yes.

20 Q You mentioned one was in your grandfather's name,
21 correct?

22 A Yes.

23 Q What's your grandfather's name?

24 A Alden Maxwell.

25 Q I'm going to show you Government Exhibit -- no objection

Maxwell - Direct - Dayananda

2263

1 now to Government Exhibit D.

2 THE COURT: D, did you say?

3 MS. DAYANANDA: D, as in David.

4 THE COURT: 8,000D, correct?

5 MS. DAYANANDA: Correct, and C.

6 THE COURT: 8,000C, 8,000D.

7 Q 8,000D and C, do these relate to the phone number of
8 the -- in the account of your grandfather, Alden Maxwell?

9 A Yes, there were three lines.

10 Q Now, those three lines, is one of those -- did you open
11 up one of those lines for Kenny?

12 A Yes.

13 Q Okay. And do you remember which one you opened up for
14 Kenny?

15 A No.

16 Q Okay. I'm going to show you to refresh your
17 recollection --

18 MS. DAYANANDA: This is for THE JUROR. Thank you.

19 Q Starting at line 8, if you want to read that silently.

20 A Okay.

21 Q Does that refresh your recollection on the number? Is
22 that -- 917-723-4900, is the number you opened up for Kenny?

23 A Yes.

24 Q And looking at this record, 917-723-4900, is that for the
25 time period of April to May of 2003?

Maxwell - Cross - Barrett

2264

1 A Yes.

2 Q At some point did Kenny ask you to change the number?

3 A Yes.

4 Q I'm showing Government Exhibit 8,000C. Is this for the
5 time period that follows; this is December through January
6 2004? Is that right, Ms. Maxwell?

7 A Yes.

8 Q And showing you the numbers now, do you remember which
9 number was the second number you opened up?

10 A The number that changed.

11 Q And would that be -- let's just compare it to the first
12 one and second one. Would that be the 917-406-576 (sic)
13 number as the new number from those two sets of documents that
14 we see there?

15 A Yes.

16 Q You did that because Kenny asked you to?

17 A Yes.

18 Q Now, you identified in that photo array a person by the
19 name of World; is that right?

20 A Yes.

21 Q And did you see Kenny with World?

22 A When I first met him.

23 Q Did they come into your Sprint store?

24 A Yeah.

25 Q And apart from that, had you ever seen World?

Myers - Direct - Amatruda

2265

1 A Not really.

2 MS. DAYANANDA: I have nothing further. Thank you.

3 THE COURT: Any cross-examination, Ms. Barrett?

4 MS. BARRETT: Yes, briefly. I can ask from right
5 there.

6 CROSS-EXAMINATION

7 BY MS. BARRETT:

8 Q Can you see me?

9 A Uh-huh.

10 Q Do you have an independent recollection in your mind of
11 those telephone numbers?

12 A No.

13 Q As you sit here today, does the fact that you were shown
14 those telephone numbers on a piece of paper bring back to your
15 mind a memory of those numbers, at the time?

16 A No.

17 MS. BARRETT: Thank you. I have nothing further.

18 THE COURT: Anything further?

19 MS. DAYANANDA: No, your Honor.

20 THE COURT: You may step down, please.

21 Are you ready for Mr. Myers now?

22 MR. AMATRUDA: Yes, your Honor.

23 THE COURT: Is this going to be your last witness?
24 Do you have somebody else?

25 MR. AMATRUDA: Your Honor, I know we have one or

Myers - Direct - Amatruda

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1 two, I think, tomorrow, two maybe three, that should be very
2 short.

3 THE COURT: All right. I wanted to get a sense of
4 things.

5 MR. AMATRUDA: Yeah.

6 THE CLERK: Mr. Myers is taking the stand. Good
7 afternoon, Mr. Myers. If you can remain standing, and raise
8 your right hand. Do you affirm to tell the truth?

9 THE JUROR: Yes, I do.

10 THE CLERK: Thank you. Please have a seat. Please
11 state and spell your name.

12 THE JUROR: Dwayne Myers, D-w-a-y-n-e, M-y-e-r-s.
13 DWAYNE MYERS,
14 called as a witness by the government, having been first duly
15 sworn, was examined and testified as follows:

16 THE CLERK: Thank you.

17 THE COURT: Your voice is loud and clear. You don't
18 have to get that close to the mike. Just press it out so we
19 don't have to be too loud or too soft. Okay?

20 Your witness.

21 MR. AMATRUDA: Thank you, your Honor.

22 DIRECT EXAMINATION

23 BY MR. AMATRUDA:

24 Q Mr. Myers, do you have a nickname?

25 A Yes, sir.

Myers - Direct - Amatruda

2267

1 Q What is that?

2 A Thor.

3 Q What year were you born?

4 A 1969.

5 Q So how old does that make you now?

6 A Forty-five.

7 Q Did you at one point live in Lafayette Gardens?

8 A Yes.

9 Q Were you a part of a gang there?

10 A Yes, sir.

11 Q What are some of the crimes -- did you commit crimes as
12 part of the gang?

13 A Yes, I did. I committed murder, robberies, burglaries,
14 drug-dealing.

15 Q And did that gang have one or more leaders?

16 A Yes, sir.

17 Q Who is that?

18 A World and Wise.

19 Q What did it mean to you as a member of the gang that
20 World was a leader?

21 A That these were the individuals that we would answer to
22 and take orders from.

23 Q Did the same thing apply to Wise?

24 A Yes, sir.

25 Q Do you see World today in court?

Myers - Direct - Amatruda

2268

1 A Yes, sir.

2 Q Can you point out something that he's -- point him out
3 and describe something he's wearing?

4 A He's wearing a buttoned up shirt.

5 MR. RUHNKE: He's identified --

6 THE COURT: The record will so reflect.

7 Q Do you see anyone else in court that's a part of the gang
8 that you were in?

9 A Yes, sir.

10 Q Who is that?

11 A Ebay.

12 Q Can you point him out and describe something he's
13 wearing?

14 A Sitting over in the blue shirt.

15 MR. HERMAN: Identified for the record.

16 THE COURT: The record will so reflect.

17 Q So you're in jail now. Have you -- you are in jail now,
18 correct?

19 A Yes, sir.

20 Q Have you pled guilty to crimes?

21 A Yes, sir.

22 Q Do you recall what crimes?

23 A Murder, racketeering, robbery.

24 Q Okay. As far as racketeering goes, have you pled guilty
25 to certain acts as part of your racketeering crime?

Myers - Direct - Amatruda

2269

1 A Yes, sir.

2 Q Do you recall which ones, what acts?

3 A The murder and the drugs.

4 Q Did you plead guilty to anything related to Ivery Davis?

5 A Yes, sir.

6 Q What was that?

7 A Murder.

8 Q And how about Tyrone Baum?

9 A Yes, sir.

10 Q And how about someone named Michael Colon?

11 A Yes, sir.

12 Q And how about drug-dealing, as part of your racketeering?

13 A Yes.

14 Q Now, you also pled guilty to murder; is that correct?

15 A Yes.

16 Q Who did you murder?

17 A A guy by the name of Kojack.

18 Q And was that murder in the aid of racketeering that you
19 pled guilty to?

20 A Yes.

21 Q You also pled guilty to an attempted robbery; is that
22 correct?

23 A Yes, sir.

24 Q Who was it that you attempted to rob?

25 A The individual that -- I don't recall his name.

Myers - Direct - Amatruda

2270

1 Q To whom did you do that with?

2 A Puff.

3 Q Okay. And was anybody else involved?

4 A His brother was present.

5 Q And what were you trying to rob from this man?

6 A At the time he had -- we had spoken with him. He had
7 merchandises (sic) that we were interested in taking from him,
8 minks, Play Stations, computers and stuff like that.

9 Q Okay. And with respect to the murder of Michael Colon,
10 where did that murder take place?

11 A Empire Skating Rink.

12 Q Did you also plead guilty to possessing a firearm?

13 A Yes, sir.

14 Q Do you know what sentence you're facing under the
15 racketeering charge that you pled to?

16 A Yes, sir.

17 Q What's that?

18 A The mandatory minimum is zero to life.

19 Q How about for the murder of Kojack?

20 A The mandatory minimum is life.

21 Q And in connection with the murder of Kojack, at one point
22 were you facing the death penalty for that offense?

23 A Yes, sir.

24 Q Are you facing that any longer?

25 A No.

Myers - Direct - Amatruda

2271

1 Q Do you know how that decision gets made, about whether or
2 not the death penalty is sought?

3 A My understanding is that the case went to the attorney
4 general, and he decided whether he wanted to pursue the death
5 penalty.

6 Q Okay. Now, you have an agreement with the government in
7 connection with your plea?

8 A Yes.

9 Q What type of agreement?

10 A Cooperation agreement.

11 Q What do you have to do as part of that?

12 A Give a description of my criminal history, be truthful,
13 and just give a testimony about my criminal history.

14 Q Okay. And do you have to also testify about other
15 people's crimes that you know about?

16 A Yes, sir.

17 Q What does the government agree to do for you if you
18 comply with your part of the agreement?

19 A To submit a letter on my behalf.

20 Q What is your understanding of the effect of that letter?

21 A This letter allows the judge to sentence me below the
22 mandatory minimum.

23 Q Do you know what goes into the letter?

24 A Everything that I've done, as far as my cooperation, the
25 things that I told him, the good, the bad.

Myers - Direct - Amatruda

2272

1 Q And has anybody told you what your sentence is going to
2 be?

3 A No, sir.

4 Q Anybody promised you what your sentence is going to be?

5 A No.

6 Q Do you know who decides what your sentence is at the end
7 of the day?

8 A No, sir.

9 Q Who is that?

10 A The judge.

11 Q If you lie here today, what happens?

12 A I don't get the cooperation agreement.

13 Q And you'll do life?

14 A Yes, sir.

15 Q Does whether or not you get a letter depend on the
16 outcome of this trial?

17 A No.

18 Q I'm going to show you what's been marked as Government
19 Exhibit 73 for identification.

20 THE COURT: That's his cooperation agreement. I
21 assume there's not going to be any objection to it in
22 evidence?

23 MR. RUHNKE: There is not.

24 THE COURT: In evidence at this time.

25 (Government's Exhibit 73 was received in evidence.)

Myers - Direct - Amatruda

2273

1 Q When you were born, where was your family living?

2 A Brownsville, Brooklyn.

3 Q Did you grow up in Brownsville?

4 A Yes, sir.

5 Q At some point, did you move from Brownsville?

6 A Yes.

7 Q Where did you move to?

8 A 457 DeKalb Avenue.

9 Q How old were you when you moved?

10 A Approximately 15, 14 years old.

11 Q And was that address within a public housing development?

12 A Yes.

13 Q Which one?

14 A Lafayette Gardens.

15 Q I'm going to show you Government Exhibit 101, which is in
16 evidence, which is the map of Lafayette Gardens. And if you
17 can touch the screen, you'll make a mark on, and if you can do
18 it which building you grew up in?

19 A (Indicating).

20 Q That was 456 DeKalb Avenue?

21 A Yes, sir.

22 Q Who was in your household when you grew up?

23 A Two sister's, nephews, my mother and father.

24 Q What did you do -- what did you like to do when you were
25 younger?

Myers - Direct - Amatruda

2274

1 A Well, when I first moved to the projects, I was a normal
2 kid, skating a lot. I was very much into sports. When we
3 moved to the projects, I realized that those activities
4 weren't available to a lot of children in the projects. They
5 were doing a lot of different things, so I started following
6 suit.

7 Q How far did you go in school?

8 A Tenth grade.

9 Q What happened when you stopped going to school?

10 A I went to prison.

11 Q What did you do to go to prison?

12 A Robbery.

13 Q When was the first time you were arrested?

14 A Probably within the first year that I moved to Lafayette
15 Gardens.

16 Q What were you arrested for?

17 A The first charge that I ever caught was trespassing.

18 Q Where did you trespass?

19 A There's a college on the corner of DeKalb and Clausen
20 Avenue, and me and some of the kids from the projects used to
21 go to that particular college, and run around, and basically
22 trespass. But one time we got the idea that if we would break
23 into the lockers, we could probably find some valuable things,
24 and we did that and ultimately got caught.

25 Q What happened?

Myers - Direct - Amatruda

2275

1 A It was a long time ago. If I recall correctly, they
2 called my parents, and my father came and picked me up.

3 Q Did you start committing more serious crimes, eventually?

4 A Yes, I did.

5 Q What were the more serious crimes did you start
6 committing when you were in your teenage years?

7 A Eventually, I started hearing about a lot of kids in the
8 neighborhood making money, as far as snatching pocketbooks and
9 snatching jewelry, and things like that, and I went the route
10 of snatching jewelry.

11 Q Okay. Did you know someone named Wise? You said you did
12 know him?

13 A Yes, sir.

14 Q I'm going to show you Government Exhibit 23 in evidence.
15 Who is that?

16 A It's Wise.

17 Q What was your relationship with Wise?

18 A He was a very good friend of mine.

19 Q Can you compare your ages?

20 A I think he was, like, a year or two younger than me.

21 Q How'd you meet him?

22 A When I first moved to the projects, there was some guys
23 in my building that let it be known that they had a rivalry
24 going on with some of the guys from the other buildings. And
25 they basically described Wise to me, who at the time was

Myers - Direct - Amatruda

2276

1 calling him Myree (phonetic), saying that when it came down to
2 it, they would match me up to him, because we were close in
3 stature.

4 Q Match you up with him to do what?

5 A As far as fighting and things like that.

6 Q Did you get to know Wise after that?

7 A Yes.

8 Q Did he live in Lafayette Gardens?

9 A Yes.

10 Q Which building?

11 A 325.

12 Q So, again, just showing you 101 in evidence, which one's
13 325?

14 A I think it's this one (indicating).

15 Q Okay. Did you know when you met Wise whether he was
16 involved in any criminal activity?

17 A Not at the time when I met him.

18 Q Okay. Did you eventually find out whether he was?

19 A Yes.

20 Q What type of criminal activity was he involved in?

21 A Early on, the younger guys used to do what was called
22 digging pockets. They used to go to midtown, and it was a
23 form of jostling, pick-pocketing.

24 Q Did you know any of the other people who were involved in
25 that, if there were any?

Myers - Direct - Amatruda

2277

1 A It was actually two individuals, named "Un," Sambo, other
2 guys.

3 Q In March of 1987, were you arrested?

4 A Yes, sir.

5 Q What was that for?

6 A Robbery.

7 Q Okay. And did you plead guilty to that crime?

8 A Yes.

9 Q What did you do to be guilty of robbery?

10 A I approached an individual with a file.

11 Q Before that, were you arrested for chain-snatching ever?

12 A Yes.

13 Q When was that, about?

14 A Well, actually, I was arrested for the chain-snatching
15 before the armed robbery. I had been arrested for the
16 chain-snatching. I had did time for that. I did six months,
17 five years probation. Then I went home, and eventually I was
18 arrested again for armed robbery.

19 Q The chain-snatching sentence, did you serve that in an
20 adult or juvenile facility?

21 A Juvenile.

22 Q Was chain-snatching something that you did often?

23 A Yes, sir.

24 Q Do you know how many times you snatched chains?

25 A No.

Myers - Direct - Amatruda

2278

1 Q Was it -- can you just -- was it a little? A lot?

2 A A lot.

3 Q Around that time, and I'm talking about 1987, did you
4 start using drugs?

5 A Yes, sir.

6 Q What drugs did you start using?

7 A Crack cocaine.

8 Q How did you start using it?

9 A Well, I was using marijuana. You had individuals in my
10 neighborhood that was a little older, and they had introduced
11 me to this new drug that had came out. And they had explained
12 that you take it, and you crush it, and you put it in the
13 marijuana, and it heightens the effect of the marijuana. And
14 I tried it and became addicted.

15 Q Okay. Did you use crack with anybody?

16 A Yes.

17 Q Who?

18 A Manny, Wise, Un.

19 Q How long did you use crack for; do you recall?

20 A Approximately from '86 to the end of '87, probably.

21 Q Did you also -- aside from marijuana and crack, have you
22 used other drugs?

23 A Just alcohol.

24 Q In March of 1988, did you get arrested again?

25 A Yes, sir.

Myers - Direct - Amatruda

2279

1 Q Is that the armed robbery you were talking about?

2 A Yes.

3 Q Can you explain what happened?

4 A One particular day I went to the junior high school
5 that's located across the street. I had a firearm that I had
6 found in a construction site that I used to work on. I took
7 the firearm with me to the school, with the intention of
8 robbing somebody. I saw an individual who had on a piece of
9 jewelry. I robbed him for it.

10 Q Were you high on crack when you did the robbery?

11 A I wasn't high at the time, but I was looking to get high.

12 Q So you wanted money for drugs?

13 A Yes, sir.

14 Q Did you plead guilty to that robbery?

15 A Yes.

16 Q Do you remember what your sentence was?

17 A My sentence -- I was on probation at the time, so they
18 gave me a year for the case, and a year for the probation, and
19 they ran the sentence concurrent.

20 Q How much time did you serve on that?

21 A Eight months.

22 Q Where did you serve it?

23 A On Riker's Island.

24 Q In January 15th of 1989, were you arrested for a drug
25 offense?

Myers - Direct - Amatruda

2280

1 A Yes, sir.

2 Q So you had been released from your year?

3 A Yes.

4 Q About how soon after you were released did you get
5 arrested for the drug crime?

6 A It was days.

7 Q Can you explain what -- were you guilty of that drug
8 crime?

9 A Yes, I was.

10 Q Can you explain what you did?

11 A The point coming home, I connected with an individual
12 that I was doing that particular year with, and he explained
13 to me that another guy that we had been friends with during
14 the time we were serving our time was in Queens, and he had an
15 area where he was pedaling drugs. We went to Queens to get
16 with him, with this plan to take over the neighborhood, and
17 when I got there, this individual was on the corner speaking
18 with a young lady. I became impatient, realizing that not
19 only did I have to wait for him to finish selling the drugs
20 that he had on him, but I had to wait until he finished
21 speaking to the girl. So I told him to give me the drugs
22 while he's speaking with the girl, and he gave me the drugs.
23 I made a sale to an undercover officer and got arrested.

24 Q So you got arrested making your drug sale to an
25 undercover officer?

Myers - Direct - Amatruda

2281

1 A Yes, sir.

2 Q What were you selling?

3 A Crack cocaine.

4 Q Okay. Do you remember how much?

5 A I think she bout a dime, \$10 worth.

6 Q Just \$10 worth?

7 A Yes.

8 Q And when you were arrested for that charge, were you held
9 in jail, or were you released on bail?

10 A I was released on bail.

11 Q And just as in connection with a lot of your arrest, did
12 you always give the police your real name?

13 A No, sir.

14 Q You used a fake name?

15 A Yes.

16 Q And what caused you to do that?

17 A Looking to avoid being prosecuted, hoping that, you know,
18 when the police came looking for me, they would not know who I
19 was.

20 Q So also in around 1989, you were around 19 years old, did
21 you get your nickname Thor?

22 A Yes.

23 Q How did you get that nickname?

24 A Me and a couple guys around the neighborhood became bored
25 one night and decided to have what's known today as the

Myers - Direct - Amatruda

2282

1 knockout game.

2 Q So what did you actually do?

3 A Well, they would punch somebody out, and if it was your
4 turn, you had to render this person unconscious.

5 Q So they would point somebody out who was just a random
6 person?

7 A Yes.

8 Q And you would assault them?

9 A Yes.

10 Q And you would knock them out?

11 A Yes, sir.

12 Q And you were good at that?

13 A Yes.

14 Q Okay. And that's how they named you Thor?

15 A Exactly.

16 Q Did you know someone named Bush?

17 A Yes.

18 Q Who was that?

19 A An individual that I met in Lafayette Gardens.

20 Q He was someone in Lafayette Gardens?

21 A Yes.

22 Q Do you know what his last name was?

23 A Hamilton.

24 Q Did he have any brothers?

25 A A brother named Ulysses.

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2283

1 Q What, if any, role did Bush have in Lafayette Gardens, in
2 1989 to 1990 time frame?

3 A When I met him, he was just coming home from prison.
4 There was a lot of talk about him coming home. His reputation
5 was for being this guy that everybody knew. He came home from
6 prison, and everyone in the projects was talking about him
7 being home. Eventually I heard that he was letting everyone
8 know, everyone in the projects know that he was home. And
9 when -- you know, all of these individuals that were doing
10 crime, whether it be drugs, or robberies, anything like that,
11 he wanted to speak with everybody.

12 Q So he summoned everybody who was a criminal together?

13 A This was my understanding, yes.

14 Q What did you do?

15 A Well, they said they was going to be meeting in the lobby
16 of 433.

17 Q And 443 is in Lafayette Gardens?

18 A Yes, sir.

19 Q Which building is 433, if you can look at the map?

20 A (Indicating).

21 Q Did you go to 433?

22 A Yes, sir.

23 Q Who was there?

24 A A bunch of people.

25 Q Can you think of anybody, specifically?

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2284

1 A Well, Bush was there, of course, Top, T-Rock, Money
2 Wheel, Black-0 Mack-0.

3 Q The T-Rock that was there, is that the individual named
4 Tyrone Baum?

5 A Yes, sir.

6 Q Is that the individual the same T-Rock, Tyrone Baum, that
7 you pled guilty to conspiring to kill in 2003?

8 A Yes, sir.

9 Q So this is 1990. I'm going to show you what I don't
10 believe is yet in evidence as Government Exhibit 22. Do you
11 recognize who that is?

12 A Yes, sir.

13 Q Who is that?

14 A Black-0 Mack-0.

15 MR. AMATRUDA: I'll move Government Exhibit 22 into
16 evidence.

17 MR. RUHNKE: Without objection.

18 THE COURT: In evidence, at this time.

19 (Government's Exhibit 22 was received in evidence.)

20 Q What was the relationship between T-Rock, Top, Black-0
21 Mack-0, and Bush?

22 A Well, these individuals were guys that weren't from the
23 projects. They were more so guys from Nostrand Avenue side,
24 who he was affiliated with that he called to the projects. No
25 one from around our way really knew them. We just knew of

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1 their reputation.

2 Q What was their reputation?

3 A For being gangsters.

4 Q What happened inside of 433 when you went there?

5 A When I walked inside the lobby, they had guns drawn.

6 Q What happened after that?

7 A It was a basically a community robbing, and it was being
8 explained that things were going to be different. It wasn't
9 going to be every man for himself.

10 Q How were things going to be different?

11 A Well, I guess from that point on, it was understood that
12 if you were going to be doing something in these particular
13 projects, you had to answer to these individuals.

14 Q Did you ever use the term PC, as in the letter P, Paul,
15 and C, as in Charlie?

16 A Yes, sir.

17 Q What did you use that to mean?

18 A It's like a tax that someone who is paying protection
19 pays.

20 Q Did that ever come up with respect to Bush?

21 A I can't say that -- I can't say that I particularly heard
22 him say to the individuals you have to pay me PC. I just
23 heard him explain to dudes that the ramped drug-dealing, and
24 robberies, and things like that was going to have to come to
25 an end.

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2286

1 Q Was he doing like community service? He wanted people to
2 stop committing crimes?

3 A Not necessarily stop committing crimes, because it was
4 just -- how can I say -- I don't know how to put it. If
5 people were committing crimes in the projects, I get the
6 impression, like, he was saying that if he wasn't getting a
7 part of it, then it wasn't supposed to go down.

8 Q Did you start committing crimes with Bush?

9 A Yes.

10 Q What type of crimes?

11 A Well, there was times when I was go with T-Rock, and Top,
12 and Mark Adams, went up to different places, where they would
13 put pressure on these different individuals.

14 Q What do you mean by that?

15 A They would speak with people and let them know that they
16 had to pay the PC, protective custody, like kind of a tax.

17 Q Did you ever become involved in criminal activity in New
18 London, Connecticut?

19 A Yes, sir.

20 Q How did you get involved in that?

21 A Around that time, they had drugs in New London,
22 Connecticut.

23 Q Generally, who is they?

24 A It was T-Rock, Top, Mark, Bush.

25 Q And did they ask you to do something in connection with

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2287

1 those drugs?

2 A Yes. There was a kid by the name of Shawn, at the time,
3 that was hustling out there. And they had got a call from a
4 young lady whose house they were using at that particular
5 time, who informed them that some individuals from that
6 neighborhood had started frequenting her apartment and selling
7 drugs there.

8 Q Did they ask you to go up and essentially be muscle in
9 that situation?

10 A Yes.

11 Q And did you go?

12 A Yes, I did.

13 Q Were you arrested when you were there?

14 A Yes.

15 Q Were the -- did the police end up getting called to the
16 house that Shawn was at?

17 A Yes.

18 Q And you were arrested for what crime?

19 A They arrested me for trespassing.

20 Q And, in fact, though, what else were you in possession
21 of, at the time, or right before the police arrested you?

22 A I was in possession of a firearm and drugs.

23 Q And that would be crack cocaine; is that right?

24 A Yes.

25 Q But you didn't get caught for that, right?

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2288

1 A No.

2 Q Did you maintain your status on bail that you had from
3 your -- this case that we had talked about, the drug case,
4 1989?

5 A Yes.

6 Q Okay. And later on that year, in June of 1989, were you
7 arrested again?

8 A Yes.

9 Q For a crime involving a police officer?

10 A Yes.

11 Q What was that?

12 A After I came from New London, Connecticut, being that the
13 drugs and the money had got caught, I came back and I
14 explained to the guys that -- I showed them the pink slip from
15 when I went through the system, so I explained to them that I
16 didn't have the money, I didn't have the drugs. They said it
17 was all right. We would work something out. And that we were
18 going to have to do something to replace those funds to get
19 the work back.

20 Q Okay. When you showed them the pink slip, what was the
21 purpose of doing that?

22 A To let them know that I actually got arrested. I didn't
23 know if they believed me or not. It wasn't like they were
24 pressing me. I wanted to show it to them.

25 Q Instead of stealing the drugs?

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2289

1 A Yes.

2 Q So what did you end up trying to do to get this money
3 back?

4 A Well, while we were standing there, trying to hatch a
5 plan to come up with some money, because when I got caught in
6 New London, Connecticut, it basically depleted all the funds
7 that we had at that particular time, and I remember we were
8 standing there, and some guys walked past --

9 Q Sorry to interrupt you, but you were standing where?

10 A On the side of 433.

11 Q In Lafayette Gardens?

12 A Yes, sir.

13 Q And what happened?

14 A And about three guys walked past, and they had on some
15 jewelry, and we decided that that would be a start.

16 Q And so did you try and -- were you going to rob those
17 people?

18 A Yes, sir.

19 Q And what happened when you were going to rob them?

20 A I followed them up the block from Lafayette and Franklin.
21 By the time we got to Lafayette and Clausen, I think they
22 realized that I was going to attempt to rob them. So what
23 they did was when they got to the corner of Lafayette and
24 Clausen, they started running.

25 Q Just for -- I'm just going to put the map back on for the

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2290

1 jury's reference. Lafayette and Clausen?

2 A Yes.

3 Q So go ahead.

4 A So they started running. And I realized that I had been
5 duped, basically, so I turned back around and started walking
6 standard 433 again.

7 Q What did you mean by being duped?

8 A I realized they knew I was going to rob them, and they
9 were biding their time to get further enough away from me, so
10 that when they started running, I wouldn't be able to catch up
11 with them.

12 Q And when you were -- when you turned around, did you walk
13 back towards 433?

14 A Yes, sir.

15 Q And what did you see when you did that?

16 A Well, I was walking, and then I was talking to a young
17 kid by the name of Kimmy. He was on the side of me with a
18 bike, and it was because of him I noticed there was a car in
19 the street trailing me. So I'm looking at the car. The car
20 was looking at me. And I realized that it was officers inside
21 the car, so I started running.

22 Q And you didn't realize it right away. Why? Were they
23 uniformed officers in a police car?

24 A No, they were plain clothes.

25 Q So you started running. And what happened when you ran?

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1 A I started running. And as I'm running towards 433, the
2 individuals that I had been with saw me running and assumed
3 that the guys who I went to rob was chasing me and started
4 firing.

5 Q At the police officers?

6 A Yes.

7 Q And you were eventually arrested for that; is that
8 correct?

9 A Yes.

10 Q And charged with attempted murder of the police officers?

11 A Yes, sir.

12 Q So you had two cases pending in Brooklyn state court, at
13 that point; is that right?

14 A Yes.

15 Q You had the drug charge and attempted murder, and what
16 ended up happening?

17 A The attempted murder was -- excuse me. The attempted
18 murder was dismissed. But the robbery I pled guilty to.

19 Q Okay. And what was the robbery?

20 A At a clothing store, a known style clothing store.

21 Q So you were arrested again; is that right?

22 A Yes.

23 Q And what were you doing during that occasion?

24 A I was with some females who were boosting around that
25 time, and they used to pay me to come with them to stores

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1 while they boost. My job was basically if they were to get
2 caught, and a security guard would try to detain them, I would
3 stop the security guard.

4 Q So you were to fight with the security guard?

5 A Yes.

6 Q And you were arrested on one occasion while that was
7 happening?

8 A Yes.

9 Q So what did you actually plead guilty to?

10 A Robbery.

11 Q What sentence did you get?

12 A Two to four.

13 Q And do you recall -- that was in 1989, correct?

14 A No, that was when I pled guilty to the drugs. When I
15 pled guilty to the robbery, it was in '93.

16 Q All right. So let's start with you pled guilty to the
17 drugs, and did you do some time in jail?

18 A Yes.

19 Q And did you get out towards the end of 1991?

20 A Yes, sir.

21 Q When you came home, did you see Wise?

22 A Yes.

23 Q Do you remember what he was doing, at that time?

24 A The normal thing that he had been doing, selling drugs.

25 Q And during this time, did you see World at all?

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2293

1 A Yes.

2 Q Can you explain -- can you explain the context that you
3 saw World?

4 A When I came home, I was hearing a lot about these
5 different factions that were being established in the
6 projects. It was -- when I went to prison, it was more so
7 like guys who had the money to purchase cocaine and turn it
8 into cocaine crack or basically just selling crack. Now, when
9 I came home, it was more so of crews.

10 Q So what were some of the crews that you saw in Lafayette
11 Gardens, at that time?

12 A It was a few. It was CMB, Cock and Squeeze. It was some
13 guys who used to call themselves the Deuces.

14 Q And you said CMB. Who was -- who were some of the people
15 associated with CMB, at that time?

16 A Wise, World, Popsie, Ebay, Trugg, Boo, Hastings.

17 Q I'm going to show you what's been marked as Government
18 Exhibit -- well, first, let me ask you, CMB, do you know what
19 that stands for?

20 A Cash Money Brothers.

21 Q Do you know where that name came from?

22 A I was in prison when they adopted that name, but I got
23 the knowledge that it came from a movie.

24 Q First I'm going to show you Government Exhibit 5 in
25 evidence. Ask you if you recognize that person?

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2294

1 A Yes, sir.

2 Q Who is that?

3 A That's Boo.

4 Q And do you recall what Boo's relationship was with World
5 during that time?

6 A I knew World and Boo was being real close friends.

7 Q Okay. Next, I'm going to show you Government Exhibit 2,
8 which I know you've already identified, but --

9 A Ebay.

10 Q And how did you meet Ebay?

11 A 1989, it was a girl by the name of Katrice. She was well
12 known in the projects. She got into an argument with a
13 female, and she wanted to have a fight with this particular
14 girl. But someone was stopping her from having the fight with
15 this girl, so she came and she got us. When we went to --

16 Q Us who is us?

17 A It was me, Wise -- I just remember -- I just remember
18 Wise being present. Other people, their names are not coming
19 to me, at this point.

20 Q So what happened?

21 A We went to the apartment, and the apartment had been the
22 apartment where Robert Footman lives. And when we knocked on
23 the door, Ebay and Trugg answered the door, so we told them
24 what was going on, and they explained that the girl had been
25 there with them. And they basically stood up and said that

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1 they wasn't going to throw the girl out to the wolves.

2 Q So that's how you met Ebay?

3 A Yes.

4 Q Now, do you know if there were any other people that you
5 said -- you mentioned Popsie; is that correct?

6 A Yes, sir.

7 Q And first I'm going to show you what's been marked
8 Government Exhibit 8. It's in evidence. Who is that?

9 A That's Trugg.

10 Q And how about Government Exhibit 24?

11 A Stack.

12 Q Seven?

13 A Popsie.

14 Q Thirty-five?

15 A Dezo (phonetic).

16 Q Were you -- were those people you mentioned as spending
17 time with World, at that time?

18 A Yes, sir.

19 Q I'm just going to show you one more, 56. Who is that?

20 A Porto.

21 Q Who did he hang out with?

22 A World.

23 Q Were there some people who hung out more with Wise, as
24 opposed to the people I just mentioned to you about World?

25 A Well, most of those individuals were close in age to

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1 World. Wise knew all of those individuals, but all of those
2 guys were more or so of the people that World hung out with,
3 basically.

4 Q Who hung out with Wise, then? Who were the older guys?

5 A Un. Another guy named Shy.

6 Q Can you describe what the situation was with respect to
7 drug-dealing, at that time, in Lafayette Gardens?

8 A Which time?

9 Q Around 1991, when you came home from your drug charge?

10 A When I came home, it was a lot of different individuals,
11 like I said, selling drugs. You even had guys coming from as
12 far as Grand and Clifton.

13 Q Who was the guy that came -- who came from Grand and
14 Clifton that you remember?

15 A I remember Rab, and Slink, and those guys coming to the
16 projects a lot.

17 Q Okay. Now, on February 21st of 1992, were you arrested?

18 A Yes.

19 Q That was the robbery, then?

20 A Yes.

21 Q With the boost thing; is that right?

22 A Yes.

23 Q Did you end up pleading guilty in that case?

24 A Yes, sir.

25 Q What was your sentence?

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1 A Two to four.

2 Q Now, did you go into jail immediately in February of
3 1992?

4 A No.

5 Q Do you remember when you pled guilty?

6 A Closer towards the end of the year.

7 Q All right. So I want to take you to between February of
8 '92 and when you went into jail the next time. What were you
9 doing?

10 A Around that time, I think I was doing robberies.

11 Q Okay. And, in fact, you were on bail, correct, for your
12 robbery case, so you weren't supposed to be committing crimes,
13 correct?

14 A Yes.

15 Q Do you remember what your situation was with drug-dealing
16 in the project, then, after your arrest?

17 A I remember it being kind of a situation where you had
18 basically dudes from different buildings who would govern
19 their building.

20 Q Okay. So as a friend of Wise, did you ever get involved
21 in anything that World was doing?

22 A At that time?

23 Q Yeah.

24 A Little things, but not like --

25 Q What kind of little things?

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2298

1 A I mean, there were, you know, times we would go different
2 places and get into altercations with people, but it wasn't as
3 if I was one of the workers.

4 Q Did you know someone named Crazy Troy?

5 A Yes, sir.

6 Q Who was that?

7 A It was a guy from the neighborhood who I met probably --
8 probably the first two or three years I moved around there.
9 Had a serious reputation for using Angel Dust.

10 Q Okay. At some point towards the end of 1992, do you
11 recall what he was doing?

12 A Yes.

13 Q What was that?

14 A He was selling heroin.

15 Q Do you know if he was affiliated with anybody?

16 A I don't know who he was affiliated with, as far as his
17 business dealings, but I knew that he was close friends with
18 JR.

19 Q JR who?

20 A Hamilton.

21 Q Did anything happen to Crazy Troy at the end of 2002?

22 A Yes, sir.

23 Q What happened?

24 A He was murdered.

25 Q Can you explain -- were you nearby when he was murdered?

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2299

1 A Yes, sir.

2 Q Did you actually see him being murdered?

3 A Yes.

4 Q Earlier that day, can you explain what you were doing?

5 A I came outside. All that week I had -- there's a small
6 park in the back of the apartments. I used to go out in the
7 park and workout.

8 Q I'm just going to show you 101. Can you show the jury
9 where you used to go workout?

10 A This park right here (indicating).

11 Q Okay. And continue, then. And you said he used to; is
12 that Troy?

13 A Yes, sir.

14 Q He used to what?

15 A He used to be in that small park right there selling
16 heroin.

17 Q And so go ahead.

18 A So I met up with him a couple times, and we struck up
19 conversations. And being that I had knew him prior to that,
20 he didn't speak with a lot of people because of the reputation
21 he had from being a little off. So me and him was having a
22 lot of conversations, and he was, you know, telling me that he
23 was basically getting his life together, and he was finally
24 off the drugs, and he was trying to, you know, just get some
25 money. While I was standing there talking to him, an

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1 individual by the name of Eric Walters approached and called
2 me over, and asked me what was I doing with him. And I told
3 him -- I said we just talking. We just chilling. Why?
4 What's up? And he said you need to stay away from him because
5 he got a hit on him. And asked him who. And he told me about
6 World and Wise.

7 Q So what happened after that?

8 A Well, being that I was friends with Wise, I told Eric to
9 go speak with them and let them know that I knew the dude, and
10 I didn't think that he was going to be a problem, and I was
11 going to try to find out what was going on.

12 Q Okay. What happened after that?

13 A Eric had explained to me that --

14 MR. RUHNKE: Your Honor, could we have foundation
15 for who Eric is?

16 MR. AMATRUDA: Sure.

17 THE COURT: Ask him further questions.

18 Q How did you know Eric?

19 A He lived in the building, on the sixth floor.

20 Q Did you know what his relationship was with Wise?

21 A He was one of the individuals in the projects that was
22 basically trying to be a part of the drug-dealing.

23 Q Okay. What do you mean by that, trying to be a part of
24 the drug-dealing?

25 A He was a school kid, a basketball player, looking to make

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1 extra money, and he was just dabbling in selling drugs.

2 Q So he was selling drugs; is that right?

3 A Yes.

4 Q Who was he selling for, if you know?

5 A Wise.

6 Q So what, if anything, did he tell you?

7 A I asked him what did it have to do with -- why was he
8 being targeted? What happened? And he explained that it had
9 something to do with him and his affiliation with JR.

10 Q Okay. So what did you do after that?

11 A Well, I told Eric -- I said I talked to dude all the
12 time. I don't know if he fuck with them like that. He just
13 knew him. Everybody knew him. Let me speak to the dude and
14 find out what's going on.

15 Q Okay. And so what happened?

16 A So Eric was -- he basically told me that he was going to
17 go let World and them know that I said the guy was good money.
18 When I say good money, I mean he was cool. Excuse me. And we
19 walked off and being -- I'm thinking that I'm having the
20 situation under control. I'm telling Troy -- I said, listen,
21 I don't know what's going on, but your name is being mixed up
22 in something, but I'm going to try to get it straight.

23 Q So were you -- were you ever with Troy, then, later that
24 day?

25 A Yes, sir.

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2302

1 Q Where were you?

2 A We walked from the projects to his apartment on Bedford
3 Avenue.

4 Q What did you see there?

5 A When we got there?

6 Q Yeah, what did you see happen?

7 A When we got to the apartment, he was asking me a lot of
8 questions about who was it that he may be in danger with. I
9 didn't really want to say any names, because I wasn't totally
10 sure what was going on. And, like I said, I thought I had the
11 situation under control, because these were guys that I knew
12 well. And me putting my name to it, I figured I was going to
13 quell any kind of violence that would occur. But at that
14 particular time, he was just saying that he was going to make
15 sure that he was safe, and I didn't actually see him, but it
16 was my impression that he --

17 Q Let me stop there. Did you stay in the apartment with
18 him, or did you leave?

19 A We left together.

20 Q You left together. And do you know where Troy went?

21 A We started walking back up the block towards the
22 projects.

23 Q Okay. And did you see anybody that you knew, at that
24 time?

25 A It was a lot of people standing on the corner.

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2303

1 Q Let me ask you this, did you ever talk to World about
2 Crazy Troy?

3 A Yes, I did.

4 Q Can you describe that -- is this on the day Troy died?

5 A This was minutes before it happened.

6 Q And what was the conversation you had?

7 A I'm coming up the block with Troy, and on the corner of
8 DeKalb and Kent Avenue, there's a phone booth.

9 Q Do you see that on the map here?

10 A It's probably like right here, in this area (indicating).

11 Q So the corner of --

12 A A little over right here, on the corner of Kent.

13 Q Kent, which is a small street?

14 A Yes.

15 Q Okay. And there was a -- what was near the phone booth?
16 Was there any kind of business establishment?

17 A There's a store directly on the corner, but there's also
18 a house that we used to frequent, the steps in front of this
19 phone booth.

20 Q So where did you see World?

21 A I didn't actually see him.

22 Q Okay. What happened?

23 A There was a couple guys standing out there, and we walked
24 up, and they was like, yo, World want to holler at you.

25 Q What happened after that?

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2304

1 A I got on the telephone with him.

2 Q Who did you recognize the person on the other end of the
3 line to be?

4 A World.

5 Q And what happened?

6 A He asked me what was I doing with Troy?

7 Q What did you say?

8 A I explained to him that I was just talking to him. I
9 heard about what was going on, but I didn't think that he had
10 anything to do with what he was assuming. He said to me
11 dude's a live wire. He's a little bugged out, and that if I
12 was putting my name on this, if something was to happen to
13 somebody, I would be held responsible.

14 Q And did anything else happen in that conversation?

15 A We agreed that everything was cool. I told him that I
16 knew for a fact that Troy wasn't trying to get involved in any
17 existing beef that was going on, and he said okay. At that
18 time, he asked me to go with an individual by the name of Phil
19 to bag up some drugs.

20 Q Okay. And that's Phil, P-h-i-l?

21 A Yes, sir.

22 Q And did you know who he was talking about when he said
23 Phil?

24 A Yes.

25 Q And what did you know about Phil and his role as far as

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1 drug-dealing with World?

2 A He was a young kid in the projects that would make money
3 by performing the tedious task of putting the crack cocaine
4 into the vials.

5 Q Okay. And I'm going to show you what's been marked as
6 Government Exhibit 40 for -- it's in evidence. Sorry. Do you
7 know who that is?

8 A Yes, sir.

9 Q Who is that?

10 A That's Phil.

11 Q And you said Phil would package for World; is that right?

12 A Yes, sir.

13 Q And World you said asked you to watch Phil?

14 A Yes.

15 Q Did he say why he wanted you to do that?

16 A Well, it was known at the time that some of these
17 individuals who would be delegated to package the crack
18 cocaine would sometimes stash, so I --

19 Q What do you mean by stash?

20 A Well, take some of the crack cocaine and hide it, and
21 keep it to themselves.

22 Q Steal it?

23 A Yes, sir.

24 Q So what was your understanding about Phil, then?

25 A That he needs to be watched.

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2306

1 Q And so what did you do?

2 A I told him all right. We waited for a few minutes. Phil
3 came you walking through the middle of the projects. He told
4 me he had what he needed. We proceeded -- well, I said bye to
5 everybody there, shook everybody hands, or whatever.

6 Q I'm sorry. When you say there, where?

7 A At the phone booth.

8 Q At the phone booth?

9 A Yes.

10 Q Okay.

11 A And we proceeded across the street, walked into 456.

12 Q All right. So, again, this is where you identified as
13 456; is that right?

14 A Yes, sir.

15 Q What happened when you went into 456?

16 A We went into the building. We were there for a short
17 duration of time or waiting for the elevator. When it came,
18 we got on the elevator. As the doors were closing, I heard
19 gunfire.

20 Q And what did you do when you heard the gunfire?

21 A Immediately I thought that Troy had probably decided to
22 make a move, and I'm thinking to myself, you know, I've done
23 something wrong, because I put my word on it that this guy was
24 not trying to get involved with anybody else's conflict. And
25 I pressed the door open, and walked out of the elevator, and

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1 started to go towards the door. As I'm getting towards the
2 door, in the lobby of 456, the front is basically glass, so I
3 get to the glass, and I can see across the street.

4 Q Okay. What did you see across the street?

5 A I see Troy on the floor and Ebay over him, firing a
6 weapon.

7 Q Firing a gun?

8 A Yes, sir.

9 Q And where was Troy across the street?

10 A Next to the phone booth.

11 Q What did you do when you saw that?

12 A Basically turned around, and walked back, and got on the
13 elevator, and went up to the apartment that I was supposed to
14 be going to, and went to establish my alibi.

15 Q When you say went to establish your alibi, what do you
16 mean by that?

17 A I wanted -- if anybody -- I didn't want to be -- it to be
18 known that I was present or even on the scene.

19 Q Were you eventually arrested for murdering Troy?

20 A Yes.

21 Q And were you taken to jail?

22 A Yes, sir.

23 Q Did you sit in what's called a lineup?

24 A Yes.

25 Q And how long did you stay in jail for?

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1 A For about a week and a half.

2 Q What happened to the case?

3 A It was dismissed.

4 Q Now, during that time before the dismissal of that case,
5 did you talk to anybody, in terms of helping out your case?

6 A Yes.

7 Q Who did you talk to?

8 A The young lady whose house we was at when me and Phil
9 went to bag up the drugs.

10 Q Was this a woman whose apartment was used for this
11 purpose just once or other times?

12 A That was probably, like, the third time we used her
13 apartment.

14 Q And what did you ask this woman to do, if anything, for
15 you?

16 A We explained to her what happened. She heard the shots,
17 and I had basically told her that if anybody asked when the
18 shots were fired, and we heard the shots being fired, I was
19 there at her house. We was all in the house.

20 Q Now -- and eventually you were released; is that right?

21 A Yes.

22 Q Do you know if you were ever indicted for that?

23 A No, I wasn't.

24 Q You were not indicted?

25 A No.

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1 Q In terms of your being arrested for this murder, how, if
2 at all, did it effect your relationship with Ebay?

3 A Our relationship at the time was strained, because me and
4 him didn't have a very strong rapport with one another. He
5 didn't really know me, and his -- his thing, he was very
6 aggressive towards some individuals in my family.

7 Q So did you eventually reconcile with Ebay?

8 A Yes.

9 Q Do you remember approximately what year that was?

10 A It was '98.

11 Q Okay. So at some point did you have a conversation with
12 World about the murder of Crazy Troy, not necessarily right
13 then, but --

14 A After I was released from prison.

15 Q Okay. And what was that conversation?

16 A I had -- it was being avoided for obvious reasons. Like
17 I said, the relationship between me and Ebay, at the time, was
18 strained, because he had stated to someone in my family that I
19 better not mention his name. So when I came home, it was, you
20 know, if -- they was related to me, so -- I hadn't seen them,
21 so it was, like, avoidance. When I finally did get to speak
22 with him, I remember him saying to me --

23 MR. HERMAN: Objection. Who is him?

24 THE COURT: Please explain who you're talking about
25 now.

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1 THE JUROR: World. When I finally saw him, I
2 remember him explaining to me that Troy had to go. He was
3 describing how he was mentally off, and how dude was going to
4 try to use him to basically assault someone in the team.

5 Q And did you have an understanding based on your
6 participation in the drug-dealing from CMB and other
7 activities as to what, if any, effect killing somebody who
8 have on your status within the group?

9 A It would definitely make -- lift the individual's status
10 up in that organization.

11 Q In fact, did you observe anything about Ebay's status
12 after the murder of Crazy Troy?

13 A Yes.

14 Q What was that?

15 A I mean, he was more revered as an individual who would
16 get the job done.

17 Q When World said to you that Troy had to go, what did you
18 understand that to mean, based on your --

19 A That he had to die.

20 Q You went -- now, so that was in December of 1992.
21 Eventually you went to state prison; is that correct?

22 A Yes.

23 Q And that was on the charges -- I guess, it was the
24 robbery charge; is that right? You've been on bail for that?

25 A Yes.

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2311

1 Q And how long were you sentenced to, at that point?

2 A Two to four.

3 Q Okay. So do you remember what year you got out in from
4 that?

5 A '95.

6 Q And where did you go when you got out?

7 A To Lafayette Gardens.

8 Q Do you remember where you lived at that time when you
9 were released?

10 A Yes, sir, 456.

11 Q At some point did you move to Queens?

12 A Come again?

13 Q At some point did you move to Queens?

14 A Yes, sir.

15 Q When was that?

16 A Probably a year after I was home.

17 Q Okay. And when you came home, where was Wise?

18 A When I first came home, Wise was hustling upstate
19 New York.

20 Q And was -- who was selling, if anybody, in Lafayette
21 Gardens hustling?

22 A There was a slew of individuals, but I knew that World
23 was the one controlling.

24 Q And when you say control, what does that mean to you, as
25 far as drug deals goes?

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1 A I came home from prison, and I remember seeing him, and
2 he was basically -- he didn't explain to me verbatim that he
3 was controlling the projects. But through casual
4 conversation, when we were just talking, and at the time he
5 had on a lot of jewelry, and nice clothes, and I recall asking
6 him to give me some money. And he laughed, and he said to me
7 you don't fuck with me like that. Excuse my language. And I
8 was shocked, you know. Because, I mean, I've known him for a
9 long time. I didn't expect that reaction from him, but it
10 wasn't out of any type of malice, because what he did was he
11 took his phone out, and he said hold on a second. And he
12 started dialing the number, and I'm standing there bewildered,
13 wondering what is he doing. What does that have to do with me
14 asking you for a couple of dollars and you're telling me no?
15 And he gets on the phone, and he goes, yeah, talk to your boy,
16 and he passes me the phone. And I say who is this? And it
17 was Wise.

18 Q And what happened with Wise that day?

19 A Oh, he was very excited about the fact that I had come
20 home and told me to stay where I was at. He was coming to
21 pick me up. I didn't realize that he was in way upstate
22 New York at the time, so I was standing in front of the
23 projects for three to four hours.

24 Q So what happened?

25 A He came. He picked me up, and immediately we jumped on

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1 the road. We're talking, and reminiscing, and the next thing
2 I know I'm seeing the highway, and I'm, like, what are you
3 doing? He's like I'm taking you to where I hustle at. I said
4 I'm on parole. I got to report to parole. He was telling me
5 it's Friday, man; you ain't got to report until Monday. So he
6 basically took me upstate with him.

7 Q Okay. Did you go back to Lafayette Gardens, then?

8 A Yes.

9 Q Okay. And what did you do when you went back to
10 Lafayette Gardens for money?

11 A From time to time, I would get up with Wise. At that
12 time, I was doing my own thing, as far as robberies, and
13 burglaries, and things like that, so I wasn't -- I didn't have
14 any connection with Wise on the hustling side, at that time.

15 Q Did you see people selling drugs in Lafayette Gardens?

16 A Yes.

17 Q Who was that?

18 A There were younger guys in the projects, at that time.
19 It wasn't the same old regimen of dudes, like Popsie, or Ebay,
20 or Boo and those buys. It was the next generation of guys
21 coming up that were actually selling drugs.

22 Q Did you know what, if any, role World had in that
23 drug-dealing?

24 A Everybody was --

25 MR. RUHNKE: Your Honor, I'm going to object,

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1 because he's not a part of it.

2 THE COURT: I think it's too general a question.

3 MR. AMATRUDA: Okay.

4 Q Well, during that time, did you spend time with the drug
5 dealers in Lafayette Gardens?

6 A Yes, I did.

7 Q Did you see what they were doing?

8 A Yes.

9 Q And did you also speak to World during that time?

10 A I spoke with him generally.

11 Q And based on -- did you get involved in the drug-dealing
12 at Lafayette Gardens?

13 A No. When I got involved with the drug-dealing myself,
14 like I said, me and Wise were very close friends, and there
15 was a time when World actually got locked up.

16 Q What, if any, role did you take on when World got locked
17 up?

18 A Well, once World got locked up, it was obvious to
19 everyone that Wise would be the one to take over in his stead.

20 Q Is that something that had happened before?

21 A Yes.

22 Q Was there any pattern to the change in leadership?

23 A Faintly, because, like I said, a lot of these guys were
24 World's peers. For Wise, they were more so younger guys.

25 Q What was the interaction between when -- if World wasn't

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2315

1 there, what would happen?

2 A Well, the same guys would answer to Wise.

3 Q How about when Wise wasn't there?

4 A Vice versa.

5 Q So you said that at some point World got locked up. Who
6 took charge of the drug-dealing?

7 A Wise.

8 MR. RUHNKE: I don't mean to interrupt, but could we
9 have a year?

10 THE COURT: Wait a second. It's an objection.
11 Overruled. If you know, who took over?

12 MR. AMATRUDA: Okay.

13 Q Okay. And do you remember about when this was?

14 A Not exactly.

15 Q You were involved in the conspiracy to kill Michael
16 Colon, correct?

17 A Yes.

18 Q That was at the roller-skating rink?

19 A Yes.

20 Q Was this before, or after, or during the period that you
21 were involved in that conspiracy?

22 A This was, like, in the beginning more so.

23 Q You mean it was before?

24 A Yes.

25 Q All right. And during that time, can you explain what,

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1 if any, role you took on in the drug-dealing?

2 A Around that time, my job -- Wise, he would pay
3 individuals to travel with him to see the connect. That's the
4 supplier for the cocaine. Once there, the individual that he
5 take (sic) with him would catch a cab and transport the drugs
6 back to Lafayette Gardens. I used to be with him every day
7 when he came to the projects, and it got to the point where he
8 just said, you know what, instead of me paying somebody else
9 to do it, why don't you just do it? So I decided to do it.

10 Q And Wise would pay you to do that for him?

11 A Yes, sir.

12 Q And during that time, did you take on any other role in
13 the drug-dealing?

14 A It wasn't like I took on a new role. I mean, all
15 throughout our friendship, Wise was an individual who I was
16 able to call on if I needed him. So in turn, whenever he
17 needed me, I was there for him. If he ever had a situation
18 dealing with any type of confrontation with different
19 individuals, I would be the guy that he would come to.

20 Q Okay. And how about did you ever assist, if at all --
21 well, did you ever know any of the workers for Wise to have
22 problems during their drug-dealing?

23 A I remember a time where -- excuse me. Repeat that
24 question again.

25 Q Sure. The workers for Wise, were you ever asked to get

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1 involved with them, if at all?

2 A Yes. Yes.

3 Q How so?

4 A Wise had given out -- the business was so rampant at the
5 time that he had to break it up in shifts, so -- but some
6 shifts were better than others, and you had some guys who
7 would take a shift, but being that they wouldn't make as much
8 moneys as the next individual on an earlier shift, wouldn't be
9 out there as much as they were supposed to. And Wise's thing
10 was to call me and have me go and check to see where the
11 individual was at, and make sure that they were where they
12 were supposed to be, and on their shift.

13 Q Okay. Do you know what the phrase "messing up the money"
14 is?

15 A Yes.

16 Q What does that mean to you?

17 A When someone doesn't bring back all of the money that
18 they're supposed to.

19 Q From that?

20 A What the crock cocaine sale.

21 Q Did you ever get involved in any situations concerning
22 people messing up money?

23 A Not particularly money. There was a time where Wise was
24 approached by a young kid one day. We were standing in the
25 park, and the kid walked up and said to Wise -- he wanted to

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1 speak to him about DJ, so they engaged in a conversation, and
2 the kid explained that DJ had been stealing crack from Wise,
3 so Wise was -- he didn't understand what the kid was saying.
4 Like what do you mean he's stealing from me? He said when you
5 pay him to bag up, he's taking some of the crack and putting
6 it to the side, and then he is making me sell it. And the kid
7 was about 14, 15 years old, and he said he didn't really know
8 what he was doing when DJ approached him, so ultimately he
9 wound up losing the drugs, and DJ was pressing him about the
10 drugs, about how he wanted his money back. So the kid,
11 realized in order for him to get out of the situation, the
12 best thing to do was to let Wise know that DJ had been
13 stealing from him.

14 Q And did you -- now, this is later, correct? This is
15 around the time that Wise was killed?

16 A No, no, no, this is probably a year or two before.

17 Q Okay. And so what did you do to DJ?

18 A Well, Wise basically told me the alternative was him
19 seriously, seriously getting hurt, or me beating him up, so I
20 elected to beat him up.

21 Q And you did beat him up?

22 A Yes, sir.

23 Q I'm going to show you just a few pictures. First is
24 Government Exhibit 9 in evidence. Who is that?

25 A Sambo.

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2319

1 Q And did you know who -- Sambo during the time period
2 around 1998, when Michael Colon was killed, what Sambo was
3 doing, if anything, with drugs?

4 A I can't recall, exactly.

5 Q Okay. Did you know Sambo to be -- were there some people
6 closer to World and some people closer to Wise?

7 A Yes. Sambo was an individual who grew up closer to
8 Wise's age. They were more peers than how Sambo and -- Sambo
9 was more of a peer to Wise than he was to World. He was older
10 than World.

11 Q How about that individual? Who is that? That's
12 Government Exhibit 10?

13 A Jimbo.

14 Q Jimbo?

15 A Yes.

16 Q How about Jimbo, who was his relationship with, if there
17 was a difference between World and Wise?

18 A His -- initially, Jimbo was real close to World -- to
19 Wise, I mean, but him and World had a very good relationship.

20 Q And how about Government Exhibit 11, who is that?

21 A Tion.

22 Q All right. And what about him, as between World and
23 Wise?

24 A From my perception, he was just a younger guy that used
25 to be around his younger -- speaking of Wise, he was a guy

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1 that used to be around his younger brother. When I came home
2 from prison, is when I met Tion. I didn't know Tion until I
3 came home from state prison the first time.

4 Q Did you know anything about whether or not he was part of
5 CMB?

6 A Yes, sir.

7 Q Do you know he was or not?

8 A Yes, he was.

9 Q Okay. And what, if any, role did he play in CMB? What
10 did he do?

11 A I remember him selling drugs. I remember him carrying
12 firearms, and shooting, things like that.

13 Q Okay. How about Jimbo? Was he part of CMB?

14 A Yes, sir.

15 Q What, if any, role what did he do as part of CMB?

16 A His role was primarily that of like an accountant. Wise
17 and World entrusted him with their money, because he was an
18 individual who was straightforward. You didn't have to worry
19 about whether he was going to play games with your money. A
20 very quiet, reserved individual, someone they both depended
21 on.

22 Q And how about Sambo, what, if anything, did he do?

23 A There was a time when Sambo himself was an individual who
24 had a very wild reputation in the projects. Once while I was
25 in prison, a situation transpired where a young man was

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1 murdered, and the word was that Sambo had snitched on some
2 individuals, so his standing in the projects wasn't as solid
3 as it was when I had previously known him.

4 Q Specifically within CMB, what would it do to your
5 reputation if someone was considered to be a snitch?

6 A Alienated. I mean, I've heard talk of what should have
7 been done to him.

8 MR. RUHNKE: Your Honor, it's getting a little vague
9 here.

10 THE COURT: Yes, when you say I heard talk, you have
11 to focus him on being more specific than that.

12 Q So was this -- and just if you answer yes or no, so I can
13 establish the basis. Did you -- were these CMB members who
14 were talking about Sambo?

15 A Yes.

16 Q Do you remember any of the people with specifics that you
17 were talking to about Sambo?

18 A No, I just remember conversations in the summertime, when
19 everybody was talking about the fact that he had snitched, and
20 he couldn't be trusted, and shouldn't be allowed to be walking
21 around the projects.

22 Q Okay. Government Exhibit 14, which is in evidence, who
23 is that?

24 A DJ.

25 Q That's the individual that you assaulted?

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1 A Yes, sir.

2 Q You assaulted him for Wise?

3 A Yes, sir.

4 Q What did DJ do, if anything, as far as criminal activity
5 with CMB?

6 A At that particular time, he was bagging, and he was
7 selling.

8 Q I'm going to show you Government Exhibit 12, which is in
9 evidence. Who is that?

10 A Carl.

11 Q And was he a part of CMB?

12 A Yes. And he grew up with guys in the projects. He was
13 more close to my age. I didn't really see him hanging out
14 with these guys, but I knew he was closely affiliated.

15 Q And what, if any, criminal activity was he involved in?

16 A I knew of a particular time where -- we called him "C".
17 He had came home from prison, and I was the one controlling
18 the drugs in the area for World, and World called me and
19 explained to me that he wanted to -- wanted "C" to be the one
20 to take over from that particular point.

21 Q Okay. And what did you do?

22 A I let him do what he had to do.

23 Q Do you remember when that was, approximately? Can you
24 relate it to any of the events that you experienced with CMB?

25 A This was probably around the time when World came home

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1 from prison.

2 Q Meaning before or after Wise was killed?

3 A After.

4 Q All right. I'm going to focus back now on 1998, during
5 the time, again, around the time that the roller rink murder
6 happened?

7 A Yes, sir.

8 Q Can you explain what was going on in terms of the drug
9 activity at LG?

10 A You had younger guys, like I said, who were basically --
11 at the time, it wasn't the shift dynamic. It was more so of
12 guys would get what was called a bomb, at the time. And it
13 was just every man for himself, but not in the sense that
14 these individuals selling drugs for themselves. These drugs
15 came from one particular source, and that source was --

16 Q Go ahead.

17 A -- was World.

18 Q Could somebody who wasn't associated with World at that
19 time sell drugs in LG?

20 A No.

21 Q Did you ever witness anybody try?

22 A I've seen instances where guys who didn't know the area
23 and may have heard about how much drugs could be sold in that
24 area try to come in the area, but immediately realize that
25 there was an organization there that wasn't allowing that to

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1 happen.

2 Q Did you ever get involved in informing anybody that they
3 couldn't sell?

4 A I never had to.

5 Q What do you mean by that?

6 A Like I said, you had individuals that used to come from
7 different neighborhoods, looking to get rid of their drugs in
8 a quick fashion. But when they would get to the projects,
9 they would realize that it was no room for anyone outside of
10 the CMB organization.

11 Q And they would leave?

12 A Yes.

13 Q In 1998, did you become a Blood?

14 A Yes, sir.

15 Q Can you -- do you remember the day that you decided to
16 become Blood?

17 A I remember the day. I couldn't tell you the date, but I
18 remember the day.

19 Q That's fine. Did you have a conversation with anybody
20 about that on the day you made that decision?

21 A Yes, sir.

22 Q Who is that?

23 A World.

24 Q And where did you talk to World about that?

25 A We were standing on the corner of Lafayette and Clausen,

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1 in front of the rent building attached to Lafayette Gardens.

2 Q Looking at the map, where was that? Lafayette and
3 Clausen? Okay. So you were standing there. What was the --
4 was anybody else talking with you, or was it just you and
5 World?

6 A There was other people around, but I just remember me and
7 him speaking.

8 Q Okay. And what was the conversation -- what do you
9 remember about the conversation?

10 A He brought up to me the fact that there were a lot of
11 young guys who were under the impression that he was what the
12 Bloods call a big homie. He had did a stint on Riker's
13 Island, so some guys who had been on Riker's Island during the
14 time that he was there, seem to have been under the impression
15 that he was a high-ranking member of the Blood organization.
16 And that word started fluctuating around, and he didn't deny
17 it. He would laugh about it. And that particular day, we
18 were standing there. We were talking, and I remember him
19 expressing to me that these young dudes is willing to do
20 anything to be part of this organization.

21 Q Okay. And did World express anything about that, then?

22 A Yes, he explained his plan to me about -- because
23 initially I told him -- I said, listen, I don't want to be
24 part of no gang. That's corny. And he was, like, well,
25 you're not going to be a part of gang. You know, we just

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1 going to act like we -- they want to put me in that position
2 saying I'm the big homie, saying that -- the phrase was what's
3 called 101. So it's 101, 102, to 103, 101 being the highest
4 ranging, 102 being second in command. He said to me they
5 think I'm the big homie, so I'm going to make you my 102, and
6 what's going to happen is these dudes is going to fall in
7 line, and blindly just be obeying commands.

8 Q And what was -- what did you say in response to that?

9 A I thought it was a hell of a plan. I agreed to it.

10 (Proceedings continued on the following page.)

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1 DIRECT EXAMINATION (CONT'D.)

2 BY MR. AMATRUDA:

3 Q And did you and World decide whether or not you would
4 have to do anything to be a Blood?

5 A Yeah, at that time it was well known that --

6 MR. RUHNKE: I object to what was well known.

7 THE COURT: Yes, objection sustained.

8 Q Okay. Let me ask you this, generally speaking, what was
9 your understanding that someone had to do at that time to
10 become part of the Bloods?

11 MR. RUHNKE: I think it is the same question.

12 THE COURT: Well, I think he can answer that.

13 Was there a general understanding that you had at
14 that time as to what somebody needed to do to become a member
15 of this gang?

16 THE JUROR: At that time --

17 THE COURT: This is of your own knowledge, what you
18 understood.

19 THE JUROR: At that time it was known that to be
20 initiated into the Bloods organization, if you were a man you
21 had to commit some act of violence, whether it was a robbery,
22 assault, a cutting, something like that.

23 Q Now, did you decide, you and World decide for yourself
24 that you would have to do some act of violence to now become a
25 Blood leader?

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1 A Yes, one of the things, one of the other things was it's
2 called being jumped in where they take a group of individuals
3 and pit them against one person.

4 Q So, they get a group of people who fight someone who
5 wants to be a member of the Bloods?

6 A Yes, for 31 seconds.

7 Q All right. And could you find anybody that wanted to
8 fight you?

9 A Well, that was the thing about it, when the younger guys
10 that was around, I had said, well, let them jump me in and the
11 younger kids, they didn't want to try that.

12 Q Can you explain just physically what you were like back
13 then, your size?

14 A 250.

15 Q And you used to box, is that right?

16 A Yes, sir.

17 Q And you were an experienced fighter, correct?

18 A Yes, sir.

19 Q All right. What did you end up doing, if anything?

20 A World decided -- we laughed about it and there was a guy
21 that walked past and he was like, you know what, just knock
22 him out.

23 Q Was that somebody that you knew?

24 A It was just an individual I had never saw before.

25 Q Somebody walking down the street?

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1 A Yes.

2 Q What did you do?

3 A I knocked them out.

4 MR. RUHNKE: Can we have a time frame?

5 THE COURT: I didn't hear you. What is the
6 objection?

7 MR. RUHNKE: We just need to know when this was.

8 THE COURT: So, the time frame, it is a reasonable
9 request so we know what we're talking about.

10 MR. AMATRUDA: That's fine, Your Honor.

11 Q Michael Colon, you pled guilty to that murder, correct?

12 A Yes, sir.

13 Q And that was in 1998, right?

14 A Yes.

15 Q And was this before the murder of Michael Colon that this
16 happened?

17 A Yes, sir.

18 Q Did anything else happen as far as the plan to become
19 Blood as that went forward?

20 A I went through with, you know, assaulting the individual.
21 From that point he elected a younger kid by the name of
22 Buddha --

23 Q "He" being World?

24 A Yes.

25 Q Okay.

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1 A As another high ranking official within the organization,
2 he had actually already been Blood but he did what's called --
3 he switched sets at that time.

4 Q You're talking about Buddha?

5 A Yes.

6 Q When you say a set, that's what?

7 A There's different factions within the Blood organization.

8 Q Okay. Was there a particular set that you and World
9 decided that you would say you were part of?

10 A Yes.

11 Q What set was that?

12 A Sex Money Murder.

13 Q Were there any other people who joined your set?

14 A Yes, Popsie, Tion, I knew that Big Jim was Blood but when
15 he came home from prison he was already Blood so I didn't know
16 whether he was part of the Sex Money Murder or not.

17 Q How about younger people, did you know if any of those
18 people joined under you?

19 A A lot of the younger guys did.

20 Q Okay. And when you say "younger guys," how old are you
21 talking about?

22 A They were around the age of my nephew who is
23 approximately 36 at this time so.

24 Q What, if anything, did you witness World have the young
25 people do anything like you said or like he had said before?

Meyers - direct - Amatruda

2331

1 A I mean a lot of the times they were reporting to him
2 pertaining to Blood activity and I wasn't being present
3 because I didn't really pick up the lingo.

4 Q Okay. I'm going to now talk about April 15th of 1998
5 which was the day Michael Colon was killed. That evening what
6 were you doing?

7 A That evening in front of 456 when I heard of the incident
8 pertaining to World --

9 Q What was the incident that you learned of?

10 A We heard that he had been 86-ed out of Empire Skating
11 Rink.

12 Q What does 86-ed mean?

13 A To be aggressively ejected from the club.

14 Q And based on your understanding at that point, what, if
15 anything, did that do to World's reputation?

16 A It was -- at that point it didn't do anything to his
17 reputation because it happened. The consequence to his
18 reputation would have been if he hadn't have done anything in
19 retaliation.

20 Q And what would have been the consequence?

21 A I mean he wouldn't have been looked at as this individual
22 who is known for being a violent individual who controls these
23 projects, who controls these --

24 Q Based on your experience in the drug trade, what might
25 happen to somebody's drug territory if their reputation slips

Meyers - direct - Amatruda

2332

1 in that way?

2 A Guys from different areas who didn't have the courage to
3 migrate into the projects looking to take over would
4 basically, you know, sense some type of weakness in him and
5 want to move in on the projects.

6 Q So, that evening did you actually see World?

7 A I went upstairs to my apartment, I don't know how long
8 afterwards after I heard about it but I had went upstairs to
9 my apartment and it wasn't very long after that my sister
10 informed me that World was at the door.

11 Q What did you do?

12 A I went to the door to find out what he wanted and when I
13 got there, I recall him having some abrasions to the face and
14 his shirt was in disarray.

15 Q What did World say to you, if anything, at that point?

16 A I looked at him, I remember looking at him and smiling
17 and he had another individual with him who thought the whole
18 situation was funny and World he said to me, he said, yo, you
19 heard what happened, you heard what happened. So, I said,
20 yeah, you got kicked out the club. He said yes. So, I went
21 to ask him about what happened and he basically didn't want to
22 talk about why he was getting kicked out the club, he was just
23 like, yo, we going back up there.

24 Q And what, if anything, did he ask you to do?

25 A At that particular point he didn't ask me to do anything.

Meyers - direct - Amatruda

2333

1 Him coming to get me, I knew he wanted to go and get violent
2 but when we standing there and I'm telling him to give me some
3 information about what was happening and the other individual
4 who was standing there laughing, he was telling the guy, he
5 was like, you think it's funny, he was like, watch when we get
6 there, watch my son beat the shit out this dude, excuse my
7 language.

8 Q Okay. And at that point what did you do?

9 A I got myself ready and said, let's go.

10 Q And what, if anything at all, did World's role in CMB
11 have to do with that decision, if anything?

12 A It had a lot to do with it, it had a lot to do with it
13 and more so, not even just the fact that he was the head of
14 CMB, I know him, he's my friend, you know, and this is my best
15 friend's little brother.

16 Q So, what happened next?

17 A I remember we got on the elevator, I don't remember the
18 conversation that we were having, it wasn't too serious, we
19 were laughing and giggling about it because we were -- me and
20 him were very confident about what we were going to do once we
21 got back to this place. When I got downstairs, when we got
22 off the elevator --

23 Q And this is where, which building?

24 A In the building 456.

25 Q When you got downstairs, is that in the lobby?

Meyers - direct - Amatruda

2334

1 A Yes.

2 Q What happened?

3 A There were other individuals standing downstairs who had
4 witnessed him coming to the building that knew that he was
5 coming to get me so they were waiting on him to come
6 downstairs. Whether their intention was to get involved or
7 not or just be nosy, I don't know, but I remember there was a
8 young kid there at the time who was a member of the Blood
9 organization.

10 Q Do you know what set -- who is this person, what did you
11 call him?

12 A His name was Tookie.

13 Q Do you know what set Tookie was a part of?

14 A He was part of Sex Money Murder.

15 Q That's your set, is that right?

16 A Yes.

17 Q What, if anything, did you see happen with Tookie then?

18 A Him and World went off to the side and had a brief
19 conversation and then Tookie went towards the elevator and
20 World came back over to me and the individual that he had came
21 to my apartment with and explained that Tookie was going to
22 get what's called a hammer which is a firearm.

23 Q And what was your understanding at that point that World
24 told you about the gun?

25 A At that particular time he was like he's going to get the

Meyers - direct - Amatruda

2335

1 firearm to just hold me down in case, you know, things got out
2 of hand but I realized at that point that it was chances that
3 it was going to be more than just a fight.

4 Q Okay. So, what did you do -- did Tookie come back
5 downstairs?

6 A Yeah, in approximately 10 to 15 minutes he came back
7 down.

8 Q And what happened?

9 A We left the building, the individual that World was with
10 had a vehicle at the time, an early model Buick I think it
11 was.

12 Q When you say "early model," you mean old or new?

13 A Old car.

14 Q Old car, okay.

15 A Yes.

16 Q So, go ahead.

17 A And we got in the vehicle, I don't remember any much of
18 the conversation.

19 Q Do you remember where everybody were sitting?

20 A I was -- World was in the passenger seat.

21 Q The front passenger seat?

22 A Yes.

23 Q Okay.

24 A I was behind him, his friend was driving and Tookie was
25 behind him.

Meyers - direct - Amatruda

2336

1 Q To your left?

2 A Yes.

3 Q All right. So, what happened on the way to the -- well,
4 did you know -- you knew where you were going at that point?

5 A Yes, I did.

6 Q What happened on your way there?

7 A I don't really recall what happened on the way there, I
8 just recall when we pulled up on Empire.

9 Q What, if anything, do you remember during the drive
10 talking about on the way there?

11 A Well, when we pulled up, we started trying to get an
12 understanding as to what exactly we were going to do and I was
13 saying that I was going to get out of the vehicle and World
14 was giving a description of the guy that who had initiated the
15 assault on him.

16 Q Okay. And did you hear World say anything else at that
17 point?

18 A Yes, he got into a conversation with Tookie and he
19 started explaining to Tookie exactly where he wanted him to
20 shoot the individual.

21 Q What did he say?

22 A I remember him telling him that he didn't want him to
23 kill him. He said, he's like, yo, remember, don't kill him,
24 just shoot him around in here (indicating.)

25 Q By "here" you're gesturing to the center of your chest?

Meyers - direct - Amatruda

2337

1 A Yes.

2 Q Okay. And did you have a reaction to that?

3 A Yeah, me and the guy that was driving, we looked at each
4 other and he was looking at me giving me a look like.

5 Q I need to know what was going on in your mind at that
6 point as opposed to the other guy?

7 A If he didn't want to kill the guy, he could have picked a
8 different place for him to get shot in because in the sternum
9 area seemed like a very vital place to shoot someone if you're
10 not gonna kill them.

11 Q What did you do at that point?

12 A I said, let me get out the vehicle and go down here and
13 look and see if I see the dude, if I see the dude, I'm just
14 gonna pop on him which is assault him.

15 Q How did you know who you were looking for?

16 A He had gave a general description.

17 Q Who is "he"?

18 A World.

19 Q And what did you do at that point?

20 A I got out the vehicle, I remember walking past the place
21 and there was still people fluctuating in the vestibule of the
22 establishment.

23 Q Can you just briefly describe what the place you were
24 walking by just looked like, what would you see if you were
25 walking by it?

Meyers - direct - Amatruda

2338

1 A When I got there it was like the police saw horses out in
2 the --

3 Q So, there were doors and then the police saw horses, you
4 were making like a V motion?

5 A Exactly, pointing towards the doorway.

6 Q Okay.

7 A And when I walked past the doorway there wasn't too many
8 people standing outside but there was one door, then there's
9 an area and then there was magnometers (sic) that you have
10 to --

11 Q As you're walking in, there's an outer door, a vestibule
12 you described and then an inner door?

13 A Yes.

14 Q All right. So, go ahead.

15 A So, when I walked past I seen a lot of people standing in
16 between where the front door was and the magnometer (sic) was
17 so I couldn't distinguish the individual that he had described
18 to me.

19 Q What did you do at that point?

20 A So, I went back to the vehicle and I had told him that I
21 didn't see the person.

22 Q When you went back to the vehicle, who was in the car?

23 A The same individuals.

24 Q So, three people in the car?

25 A Yes.

Meyers - direct - Amatruda

2339

1 Q Okay. So, World, Tookie and the driver?

2 A Yes.

3 Q All right. And when you went back to the car, did you
4 get in the car or did you -- what did you do?

5 A I went to the vehicle and I leaned in the window.

6 Q All right. What did you say?

7 A When I got to the window they was deep in conversation
8 and I said I didn't see the dude. I can't remember exactly
9 what he said but --

10 Q When you say "he," who are you talking about?

11 A World.

12 Q Okay. So, what was the substance of what he told you?

13 A I had walked up on the conversation that these three
14 individuals was having, I didn't really grasp everything that
15 they were saying, I came in the middle of the conversation. I
16 basically said, yo, I don't see the person you describing.
17 Some more words was exchanged, I don't recall, but I do
18 remember me deciding that I was going to go back one more time
19 and look to -- and take a better look.

20 Q Okay. And what was your intent if you saw this person
21 that World described?

22 A I was going to beat him up.

23 Q Okay. So, what happened then, did you go back again?

24 A Yes, I did.

25 Q And what did you do?

Meyers - direct - Amatruda

2340

1 A I went past. When I came back past the second time, I
2 didn't just walk past it, I think I went across and around so
3 now I'm coming -- because I didn't want to keep walking back
4 and forth just looking inside the place so I figured I would
5 come from the other side and walk towards the car. As I'm
6 walking towards the direction of the vehicle --

7 Q Do you remember what side the roller rink was on based on
8 where you were walking?

9 A It was on my left-hand side.

10 Q Okay. And you were walking towards where the car had
11 been?

12 A Yes, which is parked on the left-hand side as well.

13 Q All right. And as you were walking, what did you see?

14 A As I am getting closer to the front of the establishment,
15 I see Tookie and he's a couple of feet ahead of me so he
16 actually gets to the entrance of the door before I does.

17 Q Can I ask you was Tookie walking in the same direction as
18 you or towards you?

19 A He was walking towards me.

20 Q All right. From the direction that the car was?

21 A Yes.

22 Q All right. And then what happened?

23 A As I spotted him, recognition is dawning on me and I
24 realize that it is him and that's when I see him point the
25 firearm in towards the doorway of the establishment.

Meyers - direct - Amatruda

2341

1 Q What did you see next?

2 A He fired a weapon.

3 Q How far away do you recall Tookie being from the doorway
4 when he shot?

5 A He wasn't close, he was probably --

6 Q Well, let me ask you this, was Tookie -- there was the
7 roller rink, the sidewalk and the road, correct?

8 A Yes.

9 Q Was he in the road or on the sidewalk?

10 A He was on the sidewalk.

11 Q And do you remember what portion of the sidewalk?

12 A He was in the middle of the sidewalk but that particular
13 sidewalk is wide.

14 Q Okay. And what happened after Tookie shot -- do you
15 remember how many times he shot?

16 A I don't.

17 Q What happened after he shot?

18 A A lot of people started running. I seen somebody drop
19 something. Tookie ran past me. I seen that what the person
20 dropped was a cell phone, I bent down and I picked up the cell
21 phone and I stood there for a second as if trying to be
22 inconspicuous as if I wasn't with the individual who just
23 fired and while he ran that way I proceeded to go the other
24 way towards the car.

25 Q Do you remember what you were wearing at that time?

Meyers - direct - Amatruda

2342

1 A I had on an Avirex jacket.

2 Q Do you remember anything about the coloring?

3 A I thought the sleeves and the torso of the jacket were
4 two different colors.

5 Q Which direction did you run in then?

6 A I ran back towards the vehicle.

7 Q You ran towards where the car was?

8 A Yes.

9 Q Keeping the roller rink on your left-hand side?

10 A Yes.

11 Q What happened, did you make it back to the car?

12 A Yes, I did.

13 Q And who was in the car when you got back there?

14 A World and his friend.

15 Q What happened when you got there?

16 A We got in the car and they didn't want to go back in the
17 direction that we -- I had just came from so the guy did a
18 U-turn in the middle of the street, the corner was directly
19 behind us, so once he made the U-turn he went up Bedford
20 Avenue and as he was going up Bedford Avenue, by this time I
21 had explained to him where I seen Tookie running, so when we
22 got to the next corner he told the guy to stop to see that if
23 he could see Tookie. So, the guy was complaining to him that
24 he wanted to get off the scene.

25 Q I'm sorry but do you remember whether you were inside the

Meyers - direct - Amatruda

2343

1 car or outside the car when that conversation happened?

2 A The argument about --

3 Q Did you see him?

4 A I was inside the car.

5 Q And was World and the other man in the car as well?

6 A Yes.

7 Q Okay. So, what happened then?

8 A And we got to the next -- the very next intersection and
9 slowed down and looked up the block and sure enough Tookie was
10 running up the block and he got inside the vehicle.

11 Q Where did you go?

12 A To the projects.

13 Q Do you remember where you went after that night, did you
14 all get out of the car together, did Tookie get out first, did
15 you drop him off anywhere, can you explain that?

16 A Me and Tookie got out at the projects and he went his way
17 and I went mine.

18 Q Did you speak with World after that?

19 A Yes.

20 Q Do you remember how long after the murder you talked to
21 him?

22 A It was probably a day or two, I spoke with World and he
23 had some concerns because Tookie had been running around
24 telling people, I mean a lot of people had heard about the
25 shooting at Empire and Tookie had committed this act to boost

Meyers - direct - Amatruda

2344

1 his self in the Blood organization so it really didn't mean
2 anything to do it and not have anybody know about it so he was
3 bragging about it a lot.

4 Q Okay. And what, if anything, did World say about that?

5 A He was very concerned about it, the fact that the kid was
6 running around bragging about it. He felt that the kid needed
7 to be dealt with and I asked him at that particular time what
8 did he expect like, you know, me to talk to the kid and he was
9 like do whatever you gotta do.

10 Q And what did you understand that to mean, do whatever you
11 gotta do?

12 A That if he wouldn't stop talking about this shooting that
13 I would have to silence him.

14 Q So, what did you do?

15 A I went downstairs to the 15th floor where I spoke with
16 Keith and --

17 Q 15th floor of what building?

18 A 456. And Keith had heard about it as well and Keith was
19 basically saying the best way to do it is just to get rid of
20 him and at that particular time Keith had the firearm at his
21 house.

22 Q Let me interrupt you. This is Government Exhibit 6 in
23 evidence.

24 THE COURT: Mr. Amatruda, might this be a good time,
25 it is 5:00, to complete the testimony today and pick it up

Meyers - direct - Amatruda

2345

1 tomorrow morning?

2 MR. AMATRUDA: Yes, I think it is a great time,
3 Judge, I have about two questions and this is the end of this
4 segment.

5 THE COURT: Two questions and then it will be a
6 logical time to quit.

7 MR. AMATRUDA: Thank you, Your Honor.

8 THE COURT: Okay.

9 Q So, this is Keith, correct?

10 A Yes.

11 Q Was he a member of CMB?

12 A Yes.

13 Q And he had a gun in his apartment?

14 A Yes.

15 Q And what did you do?

16 A We took the firearm, got in the elevator and went
17 downstairs because they said that Tookie was downstairs and he
18 was about to go to court and there was some speculation that
19 he might go to court talking about what happened, anything
20 like that, so we wanted to see if we were gonna have to talk
21 to him or have to deal with him.

22 Q Did you get a chance to talk to him or deal with him?

23 A Well, when we got downstairs he had an entourage with him
24 because he was expecting to be remanded in court so he had
25 like three or four people with him, so when we got downstairs

Meyers - direct - Amatruda

2346

1 I recall looking at Keith and I shook my head and he was like,
2 what? I said, no, I ain't F-ing around with that.

3 Q Because there were too many people there?

4 A Yeah.

5 Q And did you ever see Tookie again after he left?

6 A No, we talked and rather than come at him with physical
7 violence I pulled him to the side and I told him about hearing
8 that he had been bragging about what had been done and told
9 him that wasn't a good look and, you know, he conceded to
10 where I was coming from and said he wasn't gonna talk about it
11 no more and he went to court and I didn't see him again until
12 I seen him in prison.

13 MR. AMATRUDA: That's all I have, thanks, Judge.

14 THE COURT: All right, fine. Ten o'clock tomorrow
15 morning. We are getting towards the end.

16 THE CLERK: All rise.

17 (Jury leaves courtroom.)

18 THE COURT: All right. Have him back tomorrow at
19 ten o'clock.

20 (Witness steps down.)

21 THE COURT: Mr. Amatruda, so give me a sense of how
22 much longer you think your direct will take. You're not under
23 any extraordinary pressure, just I want to get a realistic
24 sense so we can stage things in.

25 MR. AMATRUDA: I think my direct should probably

Proceedings

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1 take up a fair amount of the morning.

2 THE COURT: Okay.

3 MR. AMATRUDA: But I think I should be -- I
4 definitely don't expect going into the afternoon.

5 THE COURT: Fine. And what do you have planned
6 after that?

7 MR. AMATRUDA: I have our summary telephone witness
8 who I expect to be actually very quick.

9 THE COURT: Okay.

10 MR. AMATRUDA: And we have -- I'm sorry.

11 (Pause while counsel confer.)

12 MR. AMATRUDA: And we have two other very fast
13 witnesses.

14 THE COURT: Okay. So, Mr. Ruhnke and group on the
15 other side of the courtroom, I think we can anticipate that
16 tomorrow you'll have an opportunity to put in your case. I
17 don't know what you're planning to do but I think now is the
18 time you have to give me some sense of that.

19 MR. RUHNKE: Your Honor, we don't anticipate calling
20 live witnesses. I've got a series of documents, and I've sort
21 of alerted the government to this, that I want to offer under
22 Rule 806 pursuant to Edward Cooke, also known as Taz.

23 THE COURT: You have some business records?

24 MR. RUHNKE: Pardon me?

25 THE COURT: Some business records?

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1 MR. RUHNKE: No, impeachment information because
2 he's been a part of the government's entire presentation under
3 801 --

4 THE COURT: The government knows about it. I take
5 it we won't have any problems over whether that's admissible.

6 MR. RUHNKE: One never knows whether there will be
7 any problems.

8 THE COURT: Anything else?

9 MR. RUHNKE: No, that will be it. We certainly do
10 want to have an opportunity to make Rule 29 motions.

11 THE COURT: Of course.

12 MR. RUHNKE: And I'm wonder what Your Honor's
13 pleasure is, if we get the defense case in tomorrow afternoon,
14 I'd really like some time to prepare summations.

15 THE COURT: It's okay. Here's my sense of it, we
16 just interact with each other, we can all accommodate each
17 other. I've already told the jurors they're going to be
18 leaving tomorrow at three o'clock.

19 MR. RUHNKE: Yes.

20 THE COURT: So we know that. If you would like to
21 talk about anything dealing with the charge tonight, we can do
22 that, maybe we could come back in about ten minutes or so, I
23 have some questions and we can maybe make some progress in
24 terms of furthering that process along tonight. We can always
25 continue it tomorrow. But if time permits, what I'm thinking

1 of doing, you're not going to have summations tomorrow, all
2 right, but I think that I will probably before summations
3 start give the jury the first 28 pages of the charge. I did
4 that on the John trial, I think it works well. When you have
5 this beastly 78 pages for a jury to absorb, it really creates
6 a practical problem. So, I think I at least divided it up by
7 giving them the preliminary information and the definitions of
8 conspiracy, etc., before we talk about the substantive charges
9 would be a good way of breaking this up and that may just be
10 all we need to do tomorrow and then on Wednesday we can start
11 with the government's summation.

12 Does that make sense?

13 MR. RUHNKE: Well, I'm wondering when in this
14 calculation the defense gets any time at all to work on an
15 important summation.

16 THE COURT: Well, no, we're not going to have
17 summations tomorrow.

18 MR. RUHNKE: I know that but it sounds as if we are
19 going to be in court all day tomorrow.

20 THE COURT: Till three o'clock.

21 MR. RUHNKE: Well, okay.

22 THE COURT: What is it that you propose? I'm
23 willing to listen to your suggestions. It doesn't mean I'll
24 follow them but I'll listen to them.

25 MR. RUHNKE: One suggestion would be to take

1 Wednesday off, let the lawyers get their summations together.
2 We're way ahead of schedule.

3 THE COURT: No, no, it is not a question of -- I'm
4 not criticizing anybody. The government's summation is going
5 to take a fair amount of time I assume on Wednesday. Who is
6 going to be delivering it?

7 MS. DAYANANDA: I will be, Your Honor.

8 THE COURT: What do you anticipate?

9 MS. DAYANANDA: Probably about an hour, an hour and
10 a half.

11 THE COURT: That's all?

12 MS. DAYANANDA: But I think we can proceed on
13 Wednesday.

14 MR. RUHNKE: And I think Mr. Granton is going to sum
15 up first because of the reverse of opening.

16 THE COURT: What do you prefer, you want to have
17 Mr. Granton sum up first?

18 MR. RUHNKE: I think that's the way it is.

19 MR. HERMAN: That's fine.

20 MR. RUHNKE: One option would be, you know, the
21 government says it is going to be an hour, an hour and a half,
22 you know, I think that's a little underestimated and an option
23 would be to have both defense summations on Thursday.

24 THE COURT: I don't know how long it is going to
25 take you. I think, with all due respect, you have to be

1 prepared and be ready to sum up on Wednesday because the
2 charge is going to probably be on Thursday, we want to give --
3 maybe it can be Wednesday afternoon, it depends on how it all
4 breaks out but probably not and I want to give this case to
5 the jury on Thursday and I think that we have to sort of think
6 in that direction. If I give it to them on Friday -- well,
7 let me try to go straightforward. I think it is reasonable,
8 tomorrow we can leave a little earlier perhaps if you'd like
9 to do that than three o'clock. Let's see how it goes. And it
10 may well be that depending upon time, maybe I'll wait until
11 the next morning to give the first part of my charge, we'll
12 see how long it takes tomorrow to complete the case, but I
13 think you have to be prepared, all right.

14 Do you want to talk a little about the charge today
15 or do you want to wait until tomorrow.

16 Mr. Beecher?

17 MR. BEECHER: Yes, Your Honor, as long as we are on
18 the subject of a defense case, you hadn't gotten to
19 Mr. Granton so I'll fill you in now.

20 THE COURT: I'm sorry, you're so far away.

21 MR. BEECHER: Yes, I know.

22 THE COURT: A little louder.

23 MR. BEECHER: Well, that's better. Your Honor,
24 we're not going to have any live witnesses.

25 THE COURT: You're not going to have any dead

1 witnesses either.

2 MR. BEECHER: But we are working on some
3 stipulations which will be very simple and I think
4 Mr. Amatruda and I, we're progressing on that. So, we may
5 have some defense stipulations but we will not have any live
6 witnesses.

7 THE COURT: All right. Everybody is doing just
8 fine.

9 Do you want to talk a little bit about the charge
10 tonight, or you want to wait until tomorrow?

11 Why don't we take ten minutes because I have some
12 questions, I want to get some clarification on a few things.
13 Let's see if we can husband our energies and make this charge
14 a little bit more user friendly to the jurors.

15 So, let's come back in about ten minutes and just
16 spend ten minutes, see what specific requests you may have.
17 You've had an opportunity to review the proposed charge, so
18 we'll reconvene in about ten minutes, okay.

19 (Recess taken.)

20 (Continued on next page.)

21

22

23

24

25

1 THE COURT: Okay. Everybody here?

2 We don't have to dwell on things tonight to a fault,
3 I just want to make sure that I'm going to be able to deal
4 with some things here that I'm concerned about so let me have
5 your attention for a second. I'm going to go through this.

6 Is anybody listening to me? I'm sorry, maybe I
7 didn't speak loud enough, my apologies.

8 MR. RUHNKE: I didn't hear you, Your Honor.

9 THE COURT: Is the microphone on?

10 MR. AMATRUDA: I don't think so, Judge.

11 THE COURT: I'm sounding like Mr. Beecher now.

12 MR. RUHNKE: Do you want us to come up?

13 THE COURT: Make yourself comfortable. I think it
14 is on now. Law clerks you know are required to do multi-
15 tasking and next time I interview a law clerk I'll ask them if
16 they know how to handle microphones, all right.

17 So, anyway, as a general cup of tea, I'm going to
18 try to pare this down as best as I can to make it as user
19 friendly as humanly possible which is probably not humanly
20 possible, it is just deadly stuff for a jury to have to deal
21 with this mass of material.

22 So, for example, when we talk about the use of a
23 firearm I'm not going to talk about carrying a firearm, I have
24 a couple of pages here about carrying, because if I read this
25 correctly, all of the charges here deal with the use of a

1 firearm, so there's an example how I'll be able to cut out a
2 couple of pages.

3 I'm going to try to see whether I can collapse a few
4 more things here but let me go through a couple of things that
5 we highlighted in the proposed charge.

6 Now, for example, there are some inadvertent errors
7 here on page 29 where we talk about the five year period prior
8 to the filing of the indictment, that has to be August 4, 2004
9 instead of inadvertently January 31, 2014. There may be some
10 other situations where we maybe have made that type of
11 inadvertent mistake. If there are, we'll try to pick it up.
12 If not, you can call my attention to it. That's one that I
13 wanted to refer to.

14 And then I just want to on the record compliment Ty,
15 my outstanding law clerk who has been with me 100 years, in
16 putting this all together, it is not simple stuff and a less
17 experienced and talented person would not have been able to
18 have done this while I was presiding over the trial.

19 Page 42, I understand that we don't have to deal
20 with John Doe Number Two, that the Racketeering Act Eight is
21 going to be withdrawn, am I correct about that?

22 MR. AMATRUDA: Yes, Judge. We'll formally do so at
23 this time if you want.

24 THE COURT: Well, it doesn't matter, you can do it
25 now if you want.

1 MR. AMATRUDA: Sure, we're withdrawing Act Eight.

2 THE COURT: All right, so we don't have to worry
3 about California I guess anymore, right. So, that will take
4 care of a couple of pages which I'm grateful for.

5 But the New York kidnapping law is still extant,
6 right?

7 MR. AMATRUDA: Yes, Your Honor.

8 THE COURT: We've now eliminated a few more pages.
9 The remaining counts on page 50, I'm thinking about how we can
10 maybe collapse them a little bit. I don't know how I can do
11 that but a lot of this is so repetitious in many respects, so
12 I'm thinking about how I can do that.

13 The jury gets utterly confused I suspect when after
14 we explain all these things in the context of RICO we start to
15 go through it all in respect to substantive additional crimes.
16 So, I don't have any specific thoughts right now other than
17 that general thought that I wanted to try to do something
18 about seeing whether I can make that more user friendly to
19 jurors and we'll see if I can come up with something.

20 On page 53 Ty highlighted that the government's
21 theory of murder on Count Nine addresses this concept of
22 transferred intent and then there's some case law you
23 submitted on that. I haven't focused more specifically on
24 that. It seems that probably is correct but I'm willing to
25 listen to counsel on that issue. Maybe Mr. Ruhnke and group,

1 you have something to say about that.

2 MR. RUHNKE: Your Honor, I submitted to the Court a
3 couple of Second Circuit cases that say, yeah, it's proper in
4 a RICO murder case to adopt the concept of transferred intent,
5 so, and those situations are quite different than what we have
6 here. But I think it is more of a Rule 29 focused argument as
7 to whether this is a foreseeability issue and also whether
8 intent can be transferred to a completely unintended victim
9 not in the immediate zone of danger, not the situation where
10 somebody means to kill person A and winds up killing person B
11 but here the government's theory is that the intent was to
12 kill person A, person A was in fact killed or shot, the car
13 careens down the street and then wipes out a pedestrian.

14 THE COURT: So, it was like an accident is what
15 you're saying?

16 MR. RUHNKE: Well, intervening cause, the idea that
17 the victim takes off in his car and for the jury to find him
18 guilty of this they'd have to find that the defendants
19 intended to kill Mr. Camitz for the purpose of increasing or
20 maintaining their position in the enterprise and that's taking
21 transferred intent far too far.

22 THE COURT: It is somewhat problematical but we're
23 focusing on something very specific here, we'll have to come
24 to a resolution of it. Maybe the government wants to say
25 something about this because what Mr. Ruhnke has said has at

1 least some superficial appeal to it.

2 MR. AMATRUDA: Well, Your Honor, I do think
3 transferred --

4 THE COURT: He's not talking about it conceptually,
5 theoretically, he's talking about it in terms of the facts, it
6 is going to be the basis of a Rule 29 motion. We can talk
7 about it in that context.

8 MR. AMATRUDA: Yes, I just think it is a pretty
9 straightforward idea that if you shoot someone who is in the
10 driver's seat of a big car, that that person could --

11 THE COURT: Lose control of the car.

12 MR. AMATRUDA: -- lose control of the car and
13 especially when a club was being let out, I think you heard
14 evidence that nightclubs were being let out, we're talking
15 about downtown Manhattan. It doesn't seem far afield at all
16 that that's something that happened.

17 THE COURT: The question is whether they can be held
18 accountable for this unfortunate tragic situation --

19 MR. AMATRUDA: Sure.

20 THE COURT: -- affecting an innocent bystander. So,
21 we'll think about that a little bit and, you know, we don't
22 have to come to a firm resolution tonight but I just want to
23 focus issues for you to think about, okay.

24 MR. AMATRUDA: Thank you, Your Honor.

25 THE COURT: And then I made some corrections

1 throughout the charge in terms of picking up on little typos
2 and stuff like that because for sure I'm going to give the
3 charge to the jury so I'm going to try to make it as pristine
4 as possible.

5 So, when I look at page 60, 61, I'll eliminate any
6 reference to talking about the carrying of a firearm there.

7 And then Ty is concerned and he shares his concern
8 with me about Count 17 dealing with the issue of the use of a
9 firearm causing the death and that's conceptually like felony
10 murder which doesn't require necessarily premeditation, right,
11 and yet, the charge in the indictment speaks specifically
12 about premeditation. So, the question is do we just want to
13 charge felony murder or do we want to also talk about
14 premeditation. So, I'm unclear about that. Anybody wish to
15 comment on that?

16 MR. AMATRUDA: Judge, I may be -- I'm probably
17 missing something but I don't think that we have furthered any
18 theory of felony murder.

19 THE COURT: Well, you're talking about using the
20 firearm and causing the death of somebody through use of a
21 firearm.

22 MR. AMATRUDA: I mean I think --

23 THE COURT: So, the crime is the use of a firearm --
24 well, all right, so I'm going to charge it as premeditation.

25 MR. AMATRUDA: I mean my familiarity with felony

1 murder is in the course of another crime like a robbery or
2 something, someone gets killed and I don't think we're arguing
3 that.

4 THE COURT: I think premeditation is what I'll
5 charge.

6 MR. RUHNKE: I think that's right, Judge, because
7 the statute adopts 1111's definition of first degree murder,
8 1111(a).

9 THE COURT: So, that's what I'm going to do.

10 I highlighted on page 67: If a defendant is liable
11 for actual distribution on an aiding and abetting theory, he
12 is liable for the type or quantity of drugs that he helped
13 someone else to distribute or to possess with intent to
14 distribute. I think I put that in because on a prior case
15 there was a little bit of confusion about that conceptually
16 but I think that conceptually is correct, so I just want to
17 point that out to you folks.

18 Now, that's about it unless you folks have something
19 you want me to consider here. I think I've got your limiting
20 instructions pretty much carved out but you may want me to say
21 something else I don't know about. So, I'm all ears right now
22 if there's anything you want to say, Mr. Ruhnke; when I say
23 Mr. Ruhnke, I don't mean to denigrate all the other
24 distinguished lawyers.

25 MR. RUHNKE: No, I just spent some time with this on

1 a plane so I was fine with it.

2 Page 15, I'm just unclear on the state of the law.

3 I think juries did not get a second bite at the apple of --

4 THE COURT: What page?

5 MR. RUHNKE: Page 15.

6 THE COURT: 15?

7 MR. RUHNKE: 15.

8 THE COURT: Page 15, let me look at it. I just went
9 right past the boilerplate, so to speak. Which line are we
10 talking about?

11 MR. RUHNKE: It's page 15, I'll pull it right out.
12 You basically tell the jury that they first have to decide
13 whether a conspiracy existed and I thought the state of the
14 law was that once Your Honor let it in, a jury didn't have to
15 do that anymore but I may be wrong about that.

16 THE COURT: You know, we do that, I think it is
17 something which the jurors, you know, have to make that
18 determination. Is there anything that's harmful to you in
19 that respect? I don't think so.

20 MR. RUHNKE: Okay. A couple of other comments; on
21 page 14 where you ask some rhetorical questions about a
22 witness who has a cooperation agreement, I would propose
23 adding some language where you're saying: Does it appear that
24 THE JUROR' interests would be furthered by telling the truth
25 or lying, there's another option which is: Did the witnesses

1 conclude that their long-term interest in getting an agreement
2 with the government would be furthered by telling a plausible
3 lie and not getting caught at it. That's another option.

4 THE COURT: What does the government say about that?
5 I'm willing to accommodate people if everybody has no
6 problems. If there's real tension, then I have to make the
7 judge-like decision.

8 MR. AMATRUDA: Judge, I think Mr. Ruhnke is going to
9 make an excellent argument on summation that the issue is
10 whether, you know, that these people may or may not believe
11 they won't get caught.

12 THE COURT: The question is if he wants -- look, the
13 truth of the matter is I didn't even look at the boilerplate
14 but if you want me to consider that language, you can submit
15 it to me in writing and maybe the government will have no
16 objection to it, make you happy.

17 MR. RUHNKE: I'll submit something tonight, but
18 you're basically making the government's argument as part of
19 the charge and I think the defense argument should get equal
20 time in the charge.

21 THE COURT: Submit something to me, if we can
22 accommodate you with that without violating the law, we'll try
23 to do that.

24 MR. RUHNKE: Just in terms of typos on page 62, line
25 one.

1 THE COURT: I picked up a lot of it myself.

2 MR. RUHNKE: Okay. There's an "in" which should be
3 an "on" I believe, line one.

4 On page 66, line two, the word should probably be
5 deliberated instead of delivery.

6 THE COURT: I picked that up.

7 MR. RUHNKE: On the topic of the death penalty on
8 page 72.

9 THE COURT: I thought you would want that.

10 MR. RUHNKE: Yes, well, what the Court said was the
11 issue of death penalty has nothing to do with this case but
12 the fact that Mr. Mosley, for example, had actually been
13 authorized for capital punishment could be a motivating factor
14 for him to have engaged in a deal with the government and the
15 fact that various of these witnesses have acknowledged that
16 the death penalty was on the table and that that may have had
17 an influence on their decision brings it into the case.

18 THE COURT: You want me to say something about that
19 in assessing the credibility of those people --

20 MR. RUHNKE: Yes.

21 THE COURT: -- that are subject to the death
22 penalty?

23 MR. RUHNKE: That the jury can consider it to the
24 extent that fear of the death penalty may have motivated the
25 cooperators.

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1 THE COURT: I'll think about it.

2 Go ahead.

3 MR. RUHNKE: Page 74, the Court at line 11 says
4 something about they can't be found -- oh, let me just, I'm
5 sorry, let me just jump to it, 74, line 11.

6 THE COURT: You're talking about the very end of the
7 charge.

8 MR. RUHNKE: Okay. In any event, do not tell me or
9 anyone else how the jury stands until, and I would add the
10 word or unless a unanimous jury verdict is reached.

11 THE COURT: Until or unless, yes. I mean it's not
12 inevitable that a unanimous verdict -- that's okay. I've been
13 doing this for 20 years, I don't mind changing it, I think I
14 should be open to making some adjustments.

15 Now, does the government wish to say anything here?

16 MR. AMATRUDA: Your Honor, I just have one request
17 and that's under the aiding and abetting law, if Your Honor
18 would consider putting the statutory language in here.

19 THE COURT: Well, we charge it without talking about
20 the statutory language.

21 MR. AMATRUDA: Well, Your Honor, the statute
22 actually is very specifically on point here because what it
23 says is: Whoever aids, abets, commands, procures.

24 THE COURT: So, you want that command, etc., etc.?

25 MR. AMATRUDA: Yes, I mean because that's what we're

1 arguing with respect to Mr. Hardy, he is commanding these
2 murders.

3 THE COURT: So we can put the language in. The
4 charge I think is correct as we have it.

5 MR. AMATRUDA: I'm not saying it is incorrect, I'm
6 just saying that -- yeah.

7 THE COURT: You think there's such a thing as too
8 much of a good thing, Mr. Amatruda?

9 MR. AMATRUDA: I only asked for one thing, Judge.

10 THE COURT: No, no, I'll give you what you want, I
11 want to make you happy, I want to make everybody happy, but in
12 the real world when the jury is going to listen to all the
13 charges, even though I try to do my best to make it user
14 friendly by coming down and talking to them as a professor and
15 not as a stuffy judge, it's just torture for them, you know
16 that, in the real world. Sometimes these things can
17 boomerang.

18 MR. AMATRUDA: I think we all agree. I just don't
19 know how else to do it. I never heard anybody come up with a
20 better way to do it.

21 THE COURT: We're not going to be able to do it
22 either but in the real world I remember, because I speak to
23 jurors afterwards, I just share these things with you now, I
24 just try to talk directly to people in the real world, that
25 one of the jurors was really almost on the verge of saying not

1 guilty because they were offended by the length of the charge
2 and the degree of difficulty that they had to wade through it.
3 You can do as you choose, I'm not saying you're incorrect, but
4 there's a practical effect to some of these things as well
5 when you have excessive charges, multiple charges and you get
6 some blow-back sometimes but we'll see what happens here.

7 MR. AMATRUDA: I understand, Your Honor.

8 THE COURT: You have to make those judgment calls
9 when you prepare the charging document and there's things --
10 you could have added another ten, fifteen pages here if you
11 wanted to, right.

12 MR. AMATRUDA: We did take out one act.

13 THE COURT: Now, we're going to have to get the
14 verdict sheet up and I'll have that for you tomorrow because
15 you know that's all important, that's what is really going to
16 drive the jurors' deliberations perhaps more than anything
17 else. Okay.

18 So, anyway, the last thing I want to share with you,
19 Mr. Ruhnke, I understand your sensibilities about summing up,
20 you did get off Friday, I know you had a lot of other business
21 to do, you had Friday, you had Saturday, I don't feel too
22 guilty about going forward. I think it is good if we could
23 get the case to the jury on Thursday.

24 MR. RUHNKE: Feel slightly guilty, Your Honor.

25 THE COURT: I appreciate all your efforts. Work on

1 your stipulations if there are any so we don't have to have
2 any faults like we had to deal with today.

3 MR. BEECHER: Your Honor, just one moment, just a
4 minute; what is your practice on the exhibits that the jurors
5 get? I'm certain we don't put them all into the jury room at
6 once.

7 THE COURT: Here is my practice, we have an exhibit
8 list that we give to the jurors. Thank you for calling that
9 to my attention. Make sure that you have all these people who
10 I authorized to help you out and make sure you work with the
11 government to get a collective good exhibit list. I think
12 there might be one Defendant's Exhibit if I recall, maybe not.
13 Make sure you have your exhibits.

14 MR. BEECHER: The stipulations will be an exhibit
15 obviously.

16 THE COURT: We send in the list to the jurors, the
17 exhibit list.

18 Okay. See you tomorrow.

19 (Time noted: 5:45 p.m.)

20 (Proceedings adjourned as above set forth.)

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